



# Export Control Act 2020

No. 12, 2020

## Compilation No. 1

<b>Compilation date:</b>	23 June 2020
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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Export Control Act 2020* that shows the text of the law as amended and in force on 23 June 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Contents

<b>Chapter 1—Preliminary</b>	1
<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	1
3 Objects of this Act .....	2
4 Simplified outline of this Act .....	2
5 Act binds the Crown .....	5
6 Application of this Act in Australia .....	5
7 Limited application of this Act outside Australia .....	6
8 Extension of this Act to external Territories and other areas .....	7
9 Application of this Act in external Territories and other areas .....	7
10 Rights of foreign aircraft and vessels under Convention on the Law of the Sea not affected .....	9
11 Concurrent operation of State and Territory laws .....	9
<b>Part 2—Interpretation</b>	11
<b>Division 1—Definitions</b>	11
12 Definitions .....	11
13 Meaning of <i>associate</i> .....	25
14 Meaning of <i>Australian territory</i> .....	26
15 Meaning of <i>entered for export</i> .....	27
16 Meaning of <i>export operations</i> .....	27
17 Meaning of <i>installation</i> .....	28
18 Meaning of <i>integrity</i> .....	29
19 Meaning of <i>occupier</i> .....	29
<b>Division 2—Other interpretation provisions</b>	30
20 When goods are exported .....	30
21 Persons who manage or control export operations .....	30
<b>Chapter 2—Exporting goods</b>	32
<b>Part 1—Goods</b>	32
<b>Division 1—Introduction</b>	32
22 Simplified outline of this Part .....	32

---

<b>Division 2—Prohibited goods</b>	34
<b>Subdivision A—Permanently prohibited goods</b>	34
23 Goods that are prohibited from export absolutely .....	34
<b>Subdivision B—Temporarily prohibited goods</b>	34
24 Minister may temporarily prohibit export of goods from Australian territory, or from a part of Australian territory, for a period .....	34
25 Variation of temporary prohibition determination .....	35
26 Effect of temporary prohibition determination on government certificate or export permit .....	35
27 Temporary prohibition determination prevails over inconsistent rules .....	36
<b>Division 3—Prescribed goods and conditions of export</b>	37
28 Rules may prescribe goods for the purposes of this Act .....	37
29 Rules may prohibit export of prescribed goods subject to conditions .....	38
<b>Division 4—Offences and civil penalty provisions</b>	40
30 Exporting goods that are subject to absolute prohibition on export—basic contravention .....	40
31 Exporting goods that are subject to absolute prohibition on export—intention to obtain commercial advantage .....	40
32 Exporting goods that are subject to absolute prohibition on export—economic consequences for Australia .....	42
33 Conveying or possessing goods that are subject to absolute prohibition on export and are intended to be exported etc .....	43
34 Exporting goods to a temporarily prohibited place—basic contravention .....	45
35 Exporting goods to a temporarily prohibited place—intention to obtain commercial advantage .....	46
36 Exporting goods to a temporarily prohibited place— economic consequences for Australia .....	47
37 Conveying or possessing goods that are intended to be exported to a temporarily prohibited place etc .....	48
38 Exporting prescribed goods—non-compliance with prescribed export conditions—basic contravention .....	50
39 Exporting prescribed goods—non-compliance with prescribed export conditions—intention to obtain commercial advantage .....	51
40 Exporting prescribed goods—non-compliance with prescribed export conditions—economic consequences for Australia .....	52

---

---

41	Conveying or possessing prescribed goods that are intended to be exported in contravention of conditions etc. ....	53
42	Exporting prescribed goods to a particular place—non-compliance with prescribed export conditions—basic contravention .....	55
43	Exporting prescribed goods to a particular place—non-compliance with prescribed export conditions—intention to obtain commercial advantage .....	56
44	Exporting prescribed goods to a particular place—non-compliance with prescribed export conditions—economic consequences for Australia.....	57
45	Conveying or possessing prescribed goods that are intended to be exported to a particular place in contravention of conditions etc.....	59
46	Producing or preparing prescribed goods or other goods at certain premises in contravention of conditions—general.....	60
47	Producing or preparing prescribed goods or other goods at certain premises in contravention of conditions—goods to be exported to a particular place.....	62
48	Making false or misleading representation about prescribed goods that are entered for export—general.....	63
49	Making false or misleading representation about prescribed goods that are entered for export to a particular place .....	64
50	Making false or misleading representation about non-prescribed goods that are entered for export.....	65
50A	Penalties for certain contraventions by bodies corporate.....	66

**Part 2—Exemptions** 68

**Division 1—Introduction** 68

51	Simplified outline of this Part.....	68
52	Application of this Part.....	68

**Division 2—Exemptions** 70

53	Application for exemption.....	70
54	Secretary must decide whether to grant exemption .....	71
55	Exemption may be granted subject to conditions .....	72
56	Notice of decision.....	73
57	Period of effect of exemption .....	74
58	Variation of conditions of exemption .....	74
59	Revocation of exemption.....	74
60	Effect of exemption .....	75

---

<b>Part 3—Government certificates</b>	76
<b>Division 1—Introduction</b>	76
61 Simplified outline of this Part.....	76
<b>Division 2—Rule-making powers</b>	78
62 Rules may make provision for and in relation to government certificates .....	78
63 Issuing bodies.....	79
64 Certain issuing bodies may charge fees.....	79
<b>Division 3—Issue of government certificate</b>	81
65 Application for government certificate.....	81
66 Additional or corrected information .....	82
67 Issuing body must decide whether to issue government certificate.....	82
68 Powers of Secretary in relation to application .....	84
69 Applications in relation to certain kinds of non-prescribed goods .....	85
70 Government certificate for goods that are to be, or that have been, exported from certain external Territories.....	86
71 Manner of issuing government certificate .....	86
72 Period of effect of government certificate .....	87
<b>Division 4—Other matters</b>	88
73 Secretary may require assessment of goods.....	88
74 Additional or corrected information in relation to application for government certificate etc. ....	88
75 Revocation of government certificate.....	89
76 Return of government certificate .....	90
<b>Chapter 3—Accredited properties</b>	92
<b>Part 1—Introduction</b>	92
77 Simplified outline of this Chapter.....	92
<b>Part 2—Application for accreditation</b>	93
78 Application for accreditation of property .....	93
79 Secretary must decide whether to accredit property .....	93
80 Conditions of accreditation.....	95
81 Notice of decision.....	96
82 Period of effect of accreditation .....	96

---

---

<b>Part 3—Renewal of accreditation</b>	98
83 Application to renew accreditation of property .....	98
84 Secretary must decide whether to renew accreditation .....	99
85 Conditions of renewed accreditation .....	100
86 Notice of decision.....	101
<b>Part 4—Variation of accreditation</b>	102
<b>Division 1—Application by manager</b>	102
87 Application by manager for variation of accreditation or approval of alteration of property .....	102
88 Notice of variation or approval of alteration.....	103
89 Certain variations must not be made unless approved .....	104
<b>Division 2—Variation by Secretary</b>	105
90 Secretary may make variations in relation to accreditation .....	105
91 Notice of variation .....	106
<b>Part 5—Suspension of accreditation</b>	108
<b>Division 1—Suspension requested by manager</b>	108
92 Manager may request suspension .....	108
93 Request to revoke suspension.....	108
<b>Division 2—Suspension by Secretary</b>	110
94 Grounds for suspension—general.....	110
95 Grounds for suspension—overdue relevant Commonwealth liability .....	112
96 Notice of suspension.....	113
97 Period of suspension.....	114
98 Revocation of suspension .....	114
<b>Division 3—Other provisions</b>	115
99 Effect of suspension .....	115
100 Export operations must not be carried out while accreditation suspended .....	115
<b>Part 6—Revocation of accreditation</b>	117
<b>Division 1—Revocation requested by manager</b>	117
101 Manager may request revocation.....	117
<b>Division 2—Revocation by Secretary</b>	118
102 Grounds for revocation—general .....	118

---

---

103	Grounds for revocation—overdue relevant Commonwealth liability .....	119
104	Notice of revocation .....	120
<b>Division 3—Other provisions</b>		122
105	Secretary may require action to be taken after accreditation revoked .....	122
<b>Part 7—Obligations of managers of accredited properties etc.</b>		124
106	Conditions of accreditation must not be contravened .....	124
107	Additional or corrected information in relation to application for accreditation etc. ....	126
108	Notice of event or change in circumstances .....	127
109	Notice of person ceasing to be manager of accredited property .....	127
<b>Chapter 4—Registered establishments</b>		129
<b>Part 1—Introduction</b>		129
110	Simplified outline of this Chapter .....	129
<b>Part 2—Application for registration</b>		131
111	Application for registration of establishment .....	131
112	Secretary must decide whether to register establishment .....	131
113	Conditions of registration .....	133
114	Notice of decision and certificate of registration .....	134
115	Period of effect of registration .....	135
<b>Part 3—Renewal of registration</b>		137
116	Application to renew registration of establishment .....	137
117	Secretary must decide whether to renew registration .....	138
118	Conditions of renewed registration .....	139
119	Notice of decision and certificate of registration .....	140
<b>Part 4—Variation of registration</b>		141
<b>Division 1—Application by occupier</b>		141
120	Application by occupier for variation of registration or approval of alteration of establishment .....	141
121	Notice of variation or approval of alteration .....	142
122	Certain alterations of registered establishment must not be made unless approved etc. ....	143

---



---

<b>Division 2—Variation by Secretary</b>	145
123 Secretary may make variations in relation to registration.....	145
124 Notice of variation .....	147
<b>Part 5—Suspension of registration</b>	149
<b>Division 1—Suspension requested by occupier</b>	149
125 Occupier may request suspension.....	149
126 Request to revoke suspension.....	149
<b>Division 2—Suspension by Secretary</b>	151
127 Grounds for suspension—general.....	151
128 Grounds for suspension—overdue relevant Commonwealth liability .....	153
129 Notice of suspension.....	154
130 Period of suspension.....	155
131 Revocation of suspension.....	155
<b>Division 3—Direction to cease carrying out export operations</b>	156
132 Direction to cease carrying out export operations—failure to comply with conditions or requirements of this Act etc. ....	156
133 Occupier must comply with direction.....	157
134 Revocation of direction .....	158
<b>Division 4—Other provisions</b>	159
135 Effect of suspension .....	159
136 Export operations must not be carried out while registration suspended .....	159
<b>Part 6—Revocation of registration</b>	161
<b>Division 1—Revocation requested by occupier</b>	161
137 Occupier may request revocation .....	161
<b>Division 2—Revocation by Secretary</b>	162
138 Grounds for revocation—general .....	162
139 Grounds for revocation—overdue relevant Commonwealth liability .....	164
140 Notice of revocation .....	165
<b>Division 3—Other provisions</b>	166
141 Export operations must not be carried out after registration of establishment revoked .....	166
142 Secretary may require action to be taken after registration revoked.....	166

---

---

<b>Part 7—Obligations of occupiers of registered establishments</b>	168
143    Export operations not covered by registration must not be carried out.....	168
144    Conditions of registration must not be contravened .....	168
145    Additional or corrected information in relation to application for registration etc.....	170
146    Notice of changes to occupier of registered establishment .....	171
147    Notice of person ceasing to be occupier of registered establishment .....	172
<b>Part 8—Other matters</b>	173
148    Register of registered establishments .....	173
<b>Chapter 5—Approved arrangements</b>	174
<b>Part 1—Introduction</b>	174
149    Simplified outline of this Chapter.....	174
<b>Part 2—Approval of proposed arrangement</b>	175
150    Application for approval of proposed arrangement .....	175
151    Secretary must decide whether to approve proposed arrangement.....	175
152    Conditions of approved arrangement.....	177
153    Notice of decision.....	178
154    Period of effect of approved arrangement .....	178
<b>Part 3—Renewal of approved arrangement</b>	180
155    Application to renew approved arrangement .....	180
156    Secretary must decide whether to renew approved arrangement.....	180
157    Conditions of renewed approved arrangement .....	182
158    Notice of decision.....	183
<b>Part 4—Variation of approved arrangement</b>	184
<b>Division 1—Variations by holder</b>	184
<b>Subdivision A—Non-significant variations</b>	184
159    Holder may make non-significant variations of approved arrangement .....	184
160    Date of effect of varied approved arrangement .....	185

---

---

<b>Subdivision B—Significant variations and variation of conditions</b>	185
161 Application by holder for approval of approved alternative regulatory arrangement or other significant variation or to vary conditions .....	185
162 Notice of variation .....	187
163 Varied approved arrangement must not be implemented unless variation approved etc.....	187
<b>Subdivision C—Matters relating to whether proposed variation of approved arrangement is significant</b>	188
164 Matters to which regard must be had in considering whether proposed variation of approved arrangement is significant .....	188
<b>Division 2—Variation required or made by Secretary</b>	190
165 Secretary may require approved arrangement to be varied or make certain variations of approved arrangement .....	190
166 Variations required by the Secretary .....	192
167 Varied approved arrangement must not be implemented unless approved etc.....	194
168 Notice of variations made by the Secretary .....	195
<b>Part 5—Suspension of approved arrangement</b>	196
<b>Division 1—Suspension requested by holder</b>	196
169 Holder may request suspension .....	196
170 Request to revoke suspension.....	197
<b>Division 2—Suspension by Secretary</b>	198
171 Grounds for suspension—general.....	198
172 Grounds for suspension—overdue relevant Commonwealth liability .....	200
173 Notice of suspension.....	202
174 Period of suspension.....	202
175 Revocation of suspension .....	203
<b>Division 3—Other provisions</b>	204
176 Effect of suspension .....	204
177 Export operations must not be carried out while approved arrangement suspended.....	204
<b>Part 6—Revocation of approved arrangement</b>	206
<b>Division 1—Revocation requested by holder</b>	206
178 Holder may request revocation .....	206

---

---

<b>Division 2—Revocation by Secretary</b>	207
179 Grounds for revocation—general .....	207
180 Grounds for revocation—overdue relevant Commonwealth liability .....	209
181 Notice of revocation .....	210
<b>Division 3—Other provisions</b>	211
182 Export operations must not be carried out after approved arrangement revoked .....	211
183 Secretary may require action to be taken after approved arrangement revoked .....	211
<b>Part 7—Obligations of holders of approved arrangements</b>	213
184 Conditions of approved arrangement must not be contravened .....	213
185 Additional or corrected information in relation to application to approve proposed arrangement etc. ....	214
186 Notice of changes to holder of approved arrangement .....	215
187 Notification of conviction of serious offence .....	216
188 Notice of person ceasing to operate business etc. covered by approved arrangement .....	217
<b>Chapter 6—Export licences</b>	219
<b>Part 1—Introduction</b>	219
189 Simplified outline of this Chapter.....	219
<b>Part 2—Grant of export licence</b>	221
190 Application for export licence .....	221
191 Secretary must decide whether to grant export licence.....	221
192 Conditions of export licence.....	223
193 Matters to be stated in export licence .....	224
194 Period of effect of export licence.....	224
<b>Part 3—Renewal of export licence</b>	226
195 Application to renew export licence .....	226
196 Secretary must decide whether to renew export licence .....	227
197 Conditions of renewed export licence .....	228
198 Matters to be stated in renewed export licence .....	229

---

---

<b>Part 4—Variation of export licence</b>	230
<b>Division 1—Application by holder</b>	230
199 Application by holder for variation of export licence .....	230
200 Notice of variation .....	231
<b>Division 2—Variation by Secretary</b>	233
201 Secretary may make variations in relation to export licence .....	233
202 Notice of variation .....	235
<b>Part 5—Suspension of export licence</b>	236
<b>Division 1—Suspension requested by holder</b>	236
203 Holder may request suspension .....	236
204 Request to revoke suspension .....	236
<b>Division 2—Suspension by Secretary</b>	238
205 Grounds for suspension—general .....	238
206 Grounds for suspension—overdue relevant Commonwealth liability .....	240
207 Notice of suspension .....	241
208 Period of suspension .....	242
209 Revocation of suspension .....	242
<b>Division 3—Other provisions</b>	243
210 Effect of suspension .....	243
<b>Part 6—Revocation of export licence</b>	244
<b>Division 1—Revocation requested by holder</b>	244
211 Holder may request revocation .....	244
<b>Division 2—Revocation by Secretary</b>	245
212 Grounds for revocation—general .....	245
213 Grounds for revocation—overdue relevant Commonwealth liability .....	246
214 Notice of revocation .....	247
<b>Division 3—Other provisions</b>	249
215 Export operations must not be carried out after export licence revoked .....	249
216 Secretary may require action to be taken after export licence revoked .....	249
<b>Part 7—Obligations of holders of export licences</b>	251
217 Conditions of export licence must not be contravened .....	251

---

---

218	Additional or corrected information in relation to application for licence etc. ....	253
219	Notice of changes to holder of export licence.....	254
<b>Part 8—Other matters</b>		255
220	Persons who participate in the management or control of another person’s export business .....	255
221	Secretary’s powers in relation to associates of holder of export licence .....	256
222	Secretary may give directions to holder of export licence .....	257
<b>Chapter 7—Export permits</b>		259
<b>Part 1—Introduction</b>		259
223	Simplified outline of this Chapter.....	259
<b>Part 2—Issue of export permit</b>		260
224	Application for export permit .....	260
225	Secretary must decide whether to issue export permit.....	260
226	Requirements for export permit.....	261
227	Conditions of export permit.....	261
228	Period of effect of export permit .....	262
<b>Part 3—Variation, suspension and revocation of export permit</b>		264
229	Secretary may vary export permit or conditions of permit .....	264
230	Period of effect of varied export permit.....	265
231	Secretary may suspend export permit .....	265
232	Effect of suspension .....	266
233	Secretary may revoke export permit.....	266
<b>Part 4—Other matters</b>		268
234	Secretary may require assessment of goods.....	268
235	Additional or corrected information in relation to application for export permit etc. ....	268
236	Return of export permit .....	269
237	Notification that goods not to be exported.....	270
<b>Part 5—Applications for export permits</b>		271
238	Applications to which this Part applies.....	271
239	Requirements for applications .....	271
240	Additional or corrected information .....	272
241	Powers of Secretary in relation to application .....	273

---

---

<b>Chapter 8—Other matters relating to export</b>	275
<b>Part 1—Notices of intention to export</b>	275
<b>Division 1—Introduction</b>	275
242 Simplified outline of this Part.....	275
<b>Division 2—Notices of intention to export</b>	276
243 Notice of intention to export—general requirements.....	276
244 Additional or corrected information .....	277
<b>Part 2—Trade descriptions</b>	279
<b>Division 1—Introduction</b>	279
245 Simplified outline of this Part.....	279
<b>Division 2—Trade descriptions for prescribed goods</b>	280
246 Meaning of <i>trade description</i> .....	280
247 When a trade description is applied to goods .....	280
248 Rules may make provision in relation to trade descriptions .....	281
249 Conduct that contravenes rules.....	281
250 Alteration of or interference with trade description.....	282
<b>Division 3—False trade descriptions for prescribed goods</b>	284
251 Meaning of <i>false trade description</i> .....	284
252 False trade description must not be applied to prescribed goods .....	284
253 Goods with false trade description must not be exported etc.....	285
<b>Part 3—Official marks</b>	287
<b>Division 1—Introduction</b>	287
254 Simplified outline of this Part.....	287
<b>Division 2—Rule-making powers</b>	288
255 Official marks.....	288
256 Marks resembling official marks .....	288
257 Official marking devices .....	289
<b>Division 3—Offences and civil penalty provisions</b>	290
258 Conduct that contravenes rules.....	290
259 Applying a false, misleading or deceptive official mark to goods .....	290
260 Applying a false, misleading or deceptive official mark to a document.....	291

---

---

261	Conduct that results in official mark applied to goods being altered to be false, misleading or deceptive .....	291
262	Conduct that results in official mark applied to a document being altered to be false, misleading or deceptive .....	292
<b>Part 4—Tariff rate quotas</b>		294
<b>Division 1—Introduction</b>		294
263	Simplified outline of this Part.....	294
<b>Division 2—Tariff rate quota systems</b>		295
264	Tariff rate quota systems .....	295
<b>Chapter 9—Powers and officials</b>		296
<b>Part 1—Audits</b>		296
<b>Division 1—Introduction</b>		296
265	Simplified outline of this Part.....	296
<b>Division 2—General</b>		297
266	Audits of export operations .....	297
267	Audits in relation to persons performing functions or exercising powers under this Act.....	299
268	Single audit or program of audits may be required.....	300
269	Relevant person for an audit .....	300
270	Conduct of audit .....	301
271	Relevant person for an audit must provide assistance .....	302
272	Powers of auditors .....	302
<b>Division 3—Approved auditors</b>		304
273	Secretary may approve persons to conduct audits .....	304
274	Rules may provide for classes of persons to be auditors.....	305
275	Approved auditors may charge fees.....	305
<b>Part 2—Assessment of goods</b>		306
<b>Division 1—Introduction</b>		306
276	Simplified outline of this Part.....	306
<b>Division 2—General</b>		307
277	Circumstances in which an assessment may be carried out etc.....	307
278	Relevant person for an assessment of goods.....	308
279	Process for carrying out an assessment of goods etc. ....	308

---



---

280	Powers that may be exercised in carrying out an assessment of goods .....	309
<b>Division 3—Approved assessors</b>		311
281	Secretary may approve persons to carry out assessments of goods .....	311
282	Rules may provide for classes of persons to be assessors .....	312
283	Approved assessors may charge fees .....	312
<b>Part 3—Powers of the Secretary</b>		313
<b>Division 1—Introduction</b>		313
284	Simplified outline of this Part .....	313
<b>Division 2—Powers of the Secretary</b>		315
285	Power to require information or documents .....	315
286	Power to arrange for certain decisions to be made by computer programs .....	317
287	Rules may authorise Commonwealth to enter into arrangements under which money may be paid for certain purposes .....	317
288	Delegation and subdelegation .....	318
289	Minister may give directions to Secretary .....	322
<b>Part 4—Authorised officers</b>		324
<b>Division 1—Introduction</b>		324
290	Simplified outline of this Part .....	324
<b>Division 2—Authorisation</b>		326
291	Authorisation of persons to be authorised officers .....	326
292	Conditions of authorisation .....	329
293	Third party authorised officers must not contravene conditions of authorisation .....	330
294	Arrangements for State or Territory officers or employees to be authorised officers .....	330
<b>Division 3—Variation, suspension and revocation of authorisation</b>		331
<b>Subdivision A—Variation, suspension and revocation on Secretary’s own initiative</b>		331
295	Variation of authorisation .....	331
296	Suspension of authorisation .....	332
297	Revocation of authorisation .....	333

---

---

298	Notice of proposed action must be given to third party authorised officer.....	334
<b>Subdivision B—Variation, suspension and revocation on application or request by third party authorised officer</b>		
298A	Application for variation of authorisation.....	334
298B	Additional or corrected information .....	336
298C	Request for suspension of authorisation .....	337
298D	Request for revocation of authorisation.....	338
<b>Subdivision C—Other provisions</b>		
299	Secretary may request notification of certain events by suspended third party authorised officer.....	338
<b>Division 4—Functions and powers</b>		
300	Rules may confer functions or powers on authorised officers .....	340
301	Functions and powers of authorised officers .....	340
302	Third party authorised officer must not contravene direction .....	341
303	Certain authorised officers may charge fees .....	341
304	Direction to assist persons performing functions etc. under this Act .....	342
305	Direction to deal with non-compliance with the requirements of this Act etc. ....	343
<b>Division 5—Miscellaneous</b>		
306	Identity cards .....	348
307	Offence—failure to return identity card .....	348
308	Certain goods or services must not be provided to, or received by, authorised officers .....	349
309	General provisions relating to directions .....	350
<b>Part 5—Accredited veterinarians and approved export programs</b>		
<b>Division 1—Introduction</b>		
310	Simplified outline of this Part.....	352
<b>Division 2—Approved export programs</b>		
311	Approved export programs .....	354
312	Accreditation of veterinarians.....	355
313	Secretary may direct authorised officers to carry out certain export operations in approved export program .....	356
314	Secretary may direct authorised officer to monitor or review export operations in approved export programs .....	356

---

---

<b>Division 3—Offences and civil penalty provisions</b>	358
315 Offence—person other than accredited veterinarian or authorised officer carrying out export operations in approved export program .....	358
316 Strict liability offence—failure to keep records or provide reports in relation to approved export program .....	358
317 Strict liability offence—failure to remedy deficiency in carrying out approved export program .....	358
318 Offence—failure to ensure accredited veterinarian is engaged to carry out relevant export operations in approved export program .....	359
319 Strict liability offence—contravening requirement to allow accredited veterinarian etc. to accompany eligible live animals during transport to overseas destination .....	359
320 Person must not obstruct or hinder accredited veterinarians etc. carrying out export operations in approved export program .....	360
321 Strict liability offence—contravening requirement to provide reasonable facilities and assistance to accredited veterinarian etc. ....	360
<b>Division 4—Extended geographical operation of offences</b>	362
322 Extended geographical operation of offences .....	362
<b>Chapter 10—Compliance and enforcement</b>	363
<b>Part 1—Introduction</b>	363
323 Simplified outline of this Part.....	363
324 Modified meaning of <i>authorised officer</i> .....	363
<b>Part 2—Monitoring</b>	364
<b>Division 1—Introduction</b>	364
325 Simplified outline of this Part.....	364
<b>Division 2—Monitoring under Part 2 of the Regulatory Powers Act</b>	365
326 Basic monitoring powers under Part 2 of the Regulatory Powers Act .....	365
327 Modifications of Part 2 of the Regulatory Powers Act .....	366
<b>Part 3—Investigation</b>	368
<b>Division 1—Introduction</b>	368
328 Simplified outline of this Part.....	368

---

---

<b>Division 2—Investigating under Part 3 of the Regulatory Powers Act</b>	369
329 Basic investigation powers under Part 3 of the Regulatory Powers Act .....	369
330 Modifications of Part 3 of the Regulatory Powers Act .....	370
<b>Part 4—Entry to adjacent premises</b>	372
<b>Division 1—Introduction</b>	372
331 Simplified outline of this Part.....	372
332 Modified meaning of <i>premises</i> .....	372
<b>Division 2—Entering adjacent premises to gain access to other premises</b>	373
333 Entering adjacent premises to gain access to other premises .....	373
334 Entry under adjacent premises warrant.....	373
<b>Division 3—Adjacent premises warrants</b>	374
335 Application and issue of adjacent premises warrant .....	374
<b>Division 4—Obligations and powers of authorised officers</b>	376
336 Consent.....	376
337 Announcement before entry under warrant .....	376
338 Authorised officer to be in possession of warrant.....	377
339 Details of warrant etc. to be provided.....	377
340 Use of force in executing a warrant .....	378
<b>Division 5—Appropriate person’s rights and responsibilities</b>	379
341 Right to observe execution of warrant .....	379
342 Responsibility to provide facilities and assistance.....	379
<b>Division 6—Powers of issuing officers</b>	380
343 Powers of issuing officers.....	380
<b>Part 5—Entering and exercising powers on premises without a warrant or consent</b>	381
<b>Division 1—Introduction</b>	381
344 Simplified outline of this Part.....	381
345 Premises to which this Part applies.....	381
<b>Division 2—Monitoring and searching relevant premises</b>	382
346 Monitoring relevant premises .....	382
347 Offence-related searches and seizures .....	383

---

---

<b>Division 3—Obligations and powers of authorised officers</b>	385
348    Announcement before entry .....	385
349    Use of force in entering premises .....	385
<b>Division 4—Appropriate person’s rights and responsibilities</b>	386
350    Right to observe exercise of powers .....	386
351    Responsibility to provide facilities and assistance.....	386
<b>Part 6—Powers in emergency situations</b>	387
<b>Division 1—Introduction</b>	387
352    Simplified outline of this Part.....	387
<b>Division 2—Powers that may be exercised in or on premises in                     emergency situations</b>	388
353    Securing evidential material without consent or warrant in emergency situation.....	388
354    Stopping and searching conveyance without warrant in emergency situation.....	388
<b>Part 7—Civil penalties</b>	391
<b>Division 1—Introduction</b>	391
355    Simplified outline of this Part.....	391
<b>Division 2—Civil penalties under Part 4 of the Regulatory                     Powers Act</b>	392
356    Basic operation of civil penalties under Part 4 of the Regulatory Powers Act.....	392
<b>Part 8—Infringement notices</b>	393
<b>Division 1—Introduction</b>	393
358    Simplified outline of this Part.....	393
<b>Division 2—Infringement notices under Part 5 of the Regulatory                     Powers Act</b>	394
359    Basic provisions for infringement notices under Part 5 of the Regulatory Powers Act.....	394
360    Modifications of Part 5 of the Regulatory Powers Act.....	396
<b>Part 9—Enforceable undertakings</b>	397
<b>Division 1—Introduction</b>	397
361    Simplified outline of this Part.....	397

---

---

<b>Division 2—Accepting and enforcing undertakings under Part 6 of the Regulatory Powers Act</b>	398
362 Enforceable undertakings .....	398
<b>Part 10—Injunctions</b>	399
<b>Division 1—Introduction</b>	399
363 Simplified outline of this Part.....	399
<b>Division 2—Injunctions under Part 7 of the Regulatory Powers Act</b>	400
364 Injunctions.....	400
<b>Part 10A—Liability of executive officers and adverse publicity orders</b>	401
364A Simplified outline of this Part.....	401
364B Criminal liability for executive officers of bodies corporate .....	401
364C Civil liability for executive officers of bodies corporate .....	404
364D Civil penalty—indemnification of executive officers.....	408
364E Certain indemnities not authorised and certain documents void.....	408
364F Adverse publicity orders.....	408
<b>Part 11—Miscellaneous</b>	410
<b>Division 1—Introduction</b>	410
365 Simplified outline of this Part.....	410
<b>Division 2—Persons assisting authorised officers</b>	411
366 Persons assisting authorised officers .....	411
<b>Division 3—Civil penalty provisions for false or misleading information or documents</b>	412
367 Civil penalty provision for false or misleading statements in applications.....	412
368 Civil penalty provision for false or misleading information .....	412
369 Civil penalty provision for false or misleading documents.....	413
<b>Division 4—General rules about offences and civil penalty provisions</b>	415
370 Physical elements of offences.....	415
371 Contravening an offence provision or a civil penalty provision.....	415

---

---

<b>Division 5—Fit and proper person test</b>	416
372 Fit and proper person test .....	416
373 Rules may prescribe kinds of persons that are required to be fit and proper persons for the purposes of Chapter 5 or 6 .....	419
374 Notification of conviction of offence or order to pay pecuniary penalty .....	419
<b>Chapter 11—Miscellaneous</b>	422
<b>Part 1—Matters relating to applications</b>	422
<b>Division 1—Introduction</b>	422
375 Simplified outline of this Part .....	422
<b>Division 2—Matters relating to certain applications</b>	423
376 Applications to which this Division applies .....	423
377 Requirements for applications .....	423
378 Additional or corrected information .....	424
379 Dealing with applications .....	425
<b>Part 1A—Alternative regulatory arrangements</b>	430
<b>Division 1—Introduction</b>	430
379A Simplified outline of this Part .....	430
<b>Division 2—Alternative regulatory arrangements</b>	431
379B Application to approve alternative regulatory arrangement .....	431
379C Secretary must decide whether to approve alternative regulatory arrangement .....	432
<b>Part 2—Review of decisions</b>	434
<b>Division 1—Introduction</b>	434
380 Simplified outline of this Part .....	434
<b>Division 2—Review of decisions</b>	435
381 Reviewable decisions .....	435
382 Notice of decision .....	445
383 Internal review of reviewable decisions .....	445
384 Secretary may require further information from applicants .....	447
385 Review by the Administrative Appeals Tribunal .....	447
386 Review of decisions relating to tariff rate quota entitlements .....	448

---

---

<b>Part 3—Confidentiality of information</b>	449
<b>Division 1—Introduction</b>	449
387 Simplified outline of this Part.....	449
<b>Division 2—Authorised uses and disclosures</b>	450
388 Authorisation to use or disclose protected information in performing functions or exercising powers under this Act .....	450
389 Authorisation to use or disclose certain protected information for secondary permissible purposes .....	450
390 Secretary may authorise use or disclosure of certain protected information for secondary permissible purposes.....	451
391 Authorisation to use or disclose sensitive information or certain other protected information for secondary permissible purposes.....	452
392 Authorisation to use or disclose protected information for purposes of proceedings .....	453
393 Authorisation to use or disclose protected information for purposes of enforcement-related activity .....	453
394 Authorisation to use or disclose protected information if required by another Australian law .....	454
395 Authorisation to disclose protected information to person to whom information relates, or to use or disclose protected information with consent .....	454
396 Authorisation to disclose protected information to person who provided information .....	454
<b>Division 3—Offences</b>	455
397 Unauthorised use or disclosure of protected information .....	455
<b>Part 4—Cost recovery</b>	456
<b>Division 1—Introduction</b>	456
398 Simplified outline of this Part.....	456
<b>Division 2—Fees</b>	457
399 Fees and other rules for fee-bearing activities .....	457
<b>Division 3—Payment of cost-recovery charges</b>	458
400 Paying cost-recovery charges .....	458
401 Person liable to pay cost-recovery charges .....	458
402 Notional payments by the Commonwealth.....	458
<b>Division 4—Unpaid cost-recovery charges</b>	459
403 Late payment fee .....	459
404 Recovery of cost-recovery charges.....	459

---



---

<b>Division 5—Miscellaneous</b>	460
405 Secretary may remit or refund cost-recovery charges.....	460
406 Secretary may direct that activities not be carried out.....	460
<b>Part 5—Records</b>	461
<b>Division 1—Introduction</b>	461
407 Simplified outline of this Part.....	461
<b>Division 2—Records</b>	462
408 Requirements to retain records.....	462
<b>Part 6—Miscellaneous</b>	464
<b>Division 1—Introduction</b>	464
409 Simplified outline of this Part.....	464
<b>Division 2—Taking, testing and analysing samples</b>	465
410 Methods for taking, testing and analysing certain samples.....	465
411 Storage of samples.....	465
412 Test or analysis may result in destruction or reduction in value of sample.....	465
413 Appointment of analyst.....	466
414 Analyst may give certificate.....	466
415 Admission of analyst’s certificate in proceedings.....	467
<b>Division 3—Forfeiture of goods</b>	469
416 Forfeiture of goods.....	469
<b>Division 4—Damaged and destroyed goods etc.</b>	470
417 Person complying with direction or request must not damage or destroy goods.....	470
418 Goods seized in certain circumstances may be destroyed.....	470
419 Compensation for damaged or destroyed goods.....	471
420 Claims for, and amount of, compensation.....	472
<b>Division 5—Partnerships, unincorporated associations and                 trusts</b>	474
421 Treatment of partnerships.....	474
422 Treatment of unincorporated associations.....	474
423 Treatment of trusts.....	475
<b>Division 6—Matters relating to export of livestock</b>	477
424 Report to Parliament about export of livestock.....	477

---

---

<b>Division 7—Miscellaneous</b>	479
425 Compensation for acquisition of property .....	479
426 Privilege against self-incrimination .....	479
427 Hindering compliance with the Act etc. ....	480
427A Influencing a person performing functions or duties or exercising powers .....	481
428 Power or requirement to do or cause a thing to be done .....	482
429 Arrangements with States and Territories to assist in carrying out this Act .....	482
430 Protection from civil proceedings.....	482
431 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid.....	483
432 Rules.....	484
<b>Endnotes</b>	487
<b>Endnote 1—About the endnotes</b>	487
<b>Endnote 2—Abbreviation key</b>	489
<b>Endnote 3—Legislation history</b>	490
<b>Endnote 4—Amendment history</b>	491

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# **An Act to provide for the control of the export of certain goods, and for related purposes**

## **Chapter 1—Preliminary**

### **Part 1—Preliminary**

#### **1 Short title**

This Act is the *Export Control Act 2020*.

#### **2 Commencement**

- (1) Each provision of this Act 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 March 2020
2. Sections 3 to 432	A single time (in the Australian Capital Territory) to be fixed by Proclamation. However, if the provisions do not commence before 3 am (by legal time in the Australian Capital Territory) on 28 March 2021, they commence at that time.	

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## Section 3

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Objects of this Act**

The objects of this Act are the following:

- (a) to ensure that goods that are exported:
  - (i) meet relevant importing country requirements to enable and maintain overseas market access for goods exported from Australia; and
  - (ii) comply with government or industry standards or requirements relating to the goods; and
  - (iii) are traceable and, if necessary, can be recalled;
- (b) to ensure the integrity of goods that are exported;
- (c) to ensure that trade descriptions for goods that are exported are accurate;
- (d) to give effect to Australia's rights and obligations relating to goods that are exported under any international agreements to which Australia is a party.

### **4 Simplified outline of this Act**

This Act creates a framework for regulating the export of goods, including agricultural products and food, from Australian territory.

This Act includes provisions about the application of this Act and the relationship of this Act with State and Territory laws.

Certain goods are prohibited absolutely from being exported from Australian territory.

The Minister may, by legislative instrument (a temporary prohibition determination), determine:

- (a) that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, is prohibited absolutely for a specified period of up to 6 months; or
- (b) that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, to a specified place is prohibited for a specified period of up to 6 months.

The Minister may make a temporary prohibition determination only if the Minister is satisfied that the determination is necessary:

- (a) to protect human, animal or plant life or health; or
- (b) to secure compliance with an Australian law (other than this Act).

The rules may prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, unless prescribed conditions are complied with. Conditions may be prescribed for the purpose of ensuring that importing country requirements are met or government or industry standards or requirements are complied with, or to give effect to Australia's international obligations. The rules may require, for example:

- (a) export operations in relation to prescribed goods to be carried out at an accredited property or a registered establishment, or in accordance with an approved arrangement or an export licence; or
- (b) a person to hold an approved arrangement or an export licence covering prescribed goods; or
- (c) a trade description or an official mark to be applied to certain goods; or
- (d) a notice of intention to export a consignment of prescribed goods to be given; or
- (e) a government certificate or an export permit to be in force for certain goods.

Section 4

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The Secretary may grant an exemption from one or more provisions of this Act in relation to prescribed goods that are to be exported in certain circumstances.

A government certificate may be issued in relation to prescribed goods and non-prescribed goods that are to be, or that have been, exported.

The rules may make provision for and in relation to the establishment and administration of a system, or systems, of tariff rate quotas for the export of certain goods.

Authorised officers (including third party authorised officers) and other persons may exercise certain powers, including the following:

- (a) conducting audits of export operations and audits in relation to the performance of functions and the exercise of powers under this Act;
- (b) carrying out assessments of goods;
- (c) giving directions;
- (d) carrying out approved export programs for the purpose of ensuring the health and welfare of certain live animals.

A range of compliance and enforcement powers are provided, including by applying the *Regulatory Powers (Standard Provisions) Act 2014*.

Certain decisions under this Act may be reviewed internally and by the Administrative Appeals Tribunal.

The use and disclosure of information is regulated.

Fees may be charged, on a cost-recovery basis, in relation to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

The Secretary may make rules for the purposes of this Act. The rules are a disallowable legislative instrument.

## **5 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
  - (a) prosecuted for an offence; or
  - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
  - (c) given an infringement notice under Part 5 of the Regulatory Powers Act.

## **6 Application of this Act in Australia**

### *General*

- (1) Subject to subsections (2) to (4), this Act applies in Australia, and in the exclusive economic zone adjacent to Australia, and on or in the continental shelf adjacent to Australia, in relation to:
  - (a) all persons or bodies (including foreign persons or bodies); and
  - (b) all aircraft (including foreign aircraft); and
  - (c) all vessels (including foreign vessels).

Note: A reference to Australia includes a reference to the coastal sea of Australia. See section 15B of the *Acts Interpretation Act 1901*.

### *Limited application in the exclusive economic zone*

- (2) This Act applies in an area that is, or is part of, the exclusive economic zone adjacent to Australia in relation to a foreign person or body, a foreign aircraft or a foreign vessel only in relation to the export of goods that have been taken in that area.
- (3) However, subsection (2) does not prevent the exercise of powers under this Act in the contiguous zone of Australia (including the

Section 7

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external Territories) in relation to a foreign person or body, a foreign aircraft or a foreign vessel:

- (a) to investigate a contravention of this Act that occurred in Australia; or
- (b) to prevent a contravention of this Act occurring in Australia.

*Limited application on or in the continental shelf*

- (4) This Act applies in an area that:
  - (a) is on or in the continental shelf adjacent to Australia; and
  - (b) is not within the exclusive economic zone adjacent to Australia;

in relation to a foreign person or body, a foreign aircraft or a foreign vessel only in relation to the export of natural resources that have been harvested on the continental shelf in that area.

Note: For *natural resources*, see section 12.

- (5) This section has effect subject to section 10.

**7 Limited application of this Act outside Australia**

- (1) This Act applies in an area covered by subsection (2) in relation to the following:
  - (a) Australian nationals;
  - (b) Australian residents;
  - (c) the Commonwealth;
  - (d) Commonwealth bodies;
  - (e) Australian aircraft;
  - (f) Australian vessels;
  - (g) members of crews of Australian aircraft and Australian vessels (including persons in charge of Australian aircraft or Australian vessels).
- (2) This subsection covers an area that:
  - (a) is outside the outer limits of the exclusive economic zone adjacent to Australia and is not on or in the continental shelf adjacent to Australia; and



- (b) is not an external Territory, or the exclusive economic zone adjacent to an external Territory, or on or in the continental shelf adjacent to an external Territory.

## **8 Extension of this Act to external Territories and other areas**

- (1) Subject to subsection (2), this Act does not extend to the external Territories.
- (2) The rules may extend this Act, or any provisions of this Act:
  - (a) to an external Territory that is prescribed by the rules; or
  - (b) to any of the following areas that are prescribed by the rules:
    - (i) the whole or a part of the exclusive economic zone adjacent to an external Territory;
    - (ii) the whole or a part of the area that is on or in the continental shelf adjacent to an external Territory and is not within the exclusive economic zone adjacent to that Territory; or
  - (c) to an area outside the Australian fishing zone in relation to which the *Fisheries Management Act 1991* applies under regulations made for the purposes of section 8 of that Act.
- (3) The rules may extend this Act, or any provisions of this Act, to an area adjacent to an external Territory under subparagraph (2)(b)(i) or (ii) whether or not this Act extends to that external Territory.

Note 1: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in section 12).

Note 2: A provision of this Act that extends to an external Territory is taken to have effect in, and in relation to, the coastal sea of the Territory as if that coastal sea were part of the Territory (see subsection 15B(3) of the *Acts Interpretation Act 1901*).

## **9 Application of this Act in external Territories and other areas**

### *General*

- (1) If a provision of this Act extends to an external Territory or an area adjacent to an external Territory under subsection 8(2), then

Section 9

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subject to subsections (2) to (5), the provision applies in the external Territory or the adjacent area in relation to:

- (a) all persons or bodies (including foreign persons or bodies); and
- (b) all aircraft (including foreign aircraft); and
- (c) all vessels (including foreign vessels).

*Limited application in the contiguous zone*

- (2) If a provision of this Act extends to an external Territory under paragraph 8(2)(a), nothing in this Act prevents the exercise of powers under this Act in the contiguous zone adjacent to the external Territory (or in the contiguous zone adjacent to Australia) in relation to a foreign person or body, a foreign aircraft or a foreign vessel:
  - (a) to investigate a contravention of this Act that occurred in that Territory; or
  - (b) to prevent a contravention of this Act occurring in that Territory.

*Limited application in the exclusive economic zone*

- (3) If a provision of this Act extends to an area adjacent to an external Territory under subparagraph 8(2)(b)(i), the provision applies in that area in relation to a foreign person or body, a foreign aircraft or a foreign vessel only in relation to the export of goods that have been taken in that area.
- (4) However, subsection (3) does not prevent the exercise of powers under this Act in the contiguous zone adjacent to the external Territory (or in the contiguous zone adjacent to Australia) in relation to a foreign person or body, a foreign aircraft or a foreign vessel for a purpose referred to in paragraph (2)(a) or (b).

*Limited application on or in the continental shelf*

- (5) If a provision of this Act extends to an area under subparagraph 8(2)(b)(ii), the provision applies in relation to a foreign person or body, a foreign aircraft or a foreign vessel only in

relation to the export of natural resources that have been harvested on the continental shelf in that area.

Note: For *natural resources*, see section 12.

- (6) This section has effect subject to section 10.

## **10 Rights of foreign aircraft and vessels under Convention on the Law of the Sea not affected**

This Act does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign aircraft or foreign vessels, in accordance with the United Nations Convention on the Law of the Sea, above or in any of the following:

- (a) the territorial sea of Australia (including the external Territories);
- (b) the exclusive economic zone of Australia (including the external Territories);
- (c) waters above the continental shelf of Australia (including the external Territories).

## **11 Concurrent operation of State and Territory laws**

- (1) This Act does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (2) Without limiting subsection (1), this Act does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:
  - (a) the law makes an act or omission:
    - (i) an offence; or
    - (ii) subject to a civil penalty; and
  - (b) that (or any similar) act or omission is also:
    - (i) an offence against a provision of this Act; or
    - (ii) subject to a civil penalty under this Act.

Section 11

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- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following, in relation to the offence or civil penalty:
- (a) provides for a penalty that differs from the penalty provided in this Act;
  - (b) provides for fault elements that differ from the fault elements applicable to the offence or civil penalty provision created by this Act;
  - (c) provides for defences or exceptions that differ from the defences or exceptions applicable to the offence or civil penalty provision created by this Act.

## Part 2—Interpretation

### Division 1—Definitions

#### 12 Definitions

In this Act:

**accredited property** means a property that is accredited under Chapter 3.

**accredited veterinarian** means a veterinarian who is accredited in accordance with rules made for the purposes of subsection 312(1).

**adjacent premises warrant** means a warrant issued under section 335.

**aircraft** means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface.

**animal** includes a dead animal and any part of an animal, but does not include a human or a part of a human, whether the human is dead or alive.

**animal reproductive material:**

- (a) means any part of an animal from which another animal can be produced; and
- (b) includes an embryo, an egg or ovum, and semen.

**applied**, in relation to a trade description, has the meaning given by section 247.

**appropriate person** for premises to which an adjacent premises warrant relates, or premises entered under section 346 or 347, means:

- (a) the occupier of the premises; or
- (b) another person who apparently represents the occupier.

Section 12

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***approved arrangement*** means an approved arrangement under Chapter 5.

***approved assessor:***

- (a) means a person, or a person included in a class of persons, approved under subsection 281(1); and
- (b) includes a person included in a class of persons specified by rules made for the purposes of section 282.

***approved auditor:***

- (a) means a person, or a person included in a class of persons, approved under subsection 273(1); and
- (b) includes a person included in a class of persons specified by rules made for the purposes of section 274.

***approved export program*** means a program of export operations approved under subsection 311(1).

***assessor*** means:

- (a) an approved assessor; or
- (b) an authorised officer whose functions and powers include carrying out an assessment of goods under Part 2 of Chapter 9.

***associate*** of a person has a meaning affected by section 13.

***auditor*** means:

- (a) an approved auditor; or
- (b) an authorised officer whose functions and powers include conducting an audit under Part 1 of Chapter 9.

***Australian aircraft*** means an aircraft that is registered under regulations made under the *Civil Aviation Act 1988*.

***Australia New Zealand Food Standards Code*** has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

***Australian fishing zone*** has the same meaning as in the *Fisheries Management Act 1991*.

***Australian law*** means a law of the Commonwealth, or of a State or Territory.

***Australian national*** means:

- (a) an Australian citizen; or
- (b) a body corporate established by or under a law of the Commonwealth or of a State or Territory.

***Australian resident*** means:

- (a) an individual who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law; or
- (b) a body corporate that has its principal place of business in Australia.

***Australian territory*** has the meaning given by section 14.

***Australian vessel*** means an Australian ship within the meaning of the *Shipping Registration Act 1981*.

***authorised officer*** means (except as provided by section 324) a person who is authorised under section 291 to be an authorised officer under this Act.

Note: Section 324 provides a modified meaning of ***authorised officer*** for the purposes of Chapter 10 (compliance and enforcement).

***certificate of registration***, for a registered establishment, means the most recent certificate of registration for the establishment given to the occupier of the establishment under Chapter 4.

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***Commonwealth authorised officer*** means an authorised officer who is an officer or employee of a Commonwealth body.

Section 12

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**Commonwealth body** includes a Department of State, or an authority, of the Commonwealth.

**conveyance** means any of the following:

- (a) an aircraft;
- (b) a vessel;
- (c) a vehicle;
- (d) any other means of transport prescribed by the rules.

**corporation** means a corporation within the meaning of the *Corporations Act 2001*.

**cost-recovery charge** means:

- (a) a fee prescribed by rules made for the purposes of subsection 399(1) for a fee-bearing activity; or
- (b) a charge imposed by:
  - (i) the *Export Charges (Imposition—Customs) Act 2015*; or
  - (ii) the *Export Charges (Imposition—Excise) Act 2015*; or
  - (iii) the *Export Charges (Imposition—General) Act 2015*; or
- (c) a late payment fee relating to a fee or charge described in paragraph (a) or (b).

**covering**, in relation to goods, includes a bottle, box, capsule, case, container, frame, glass, seal, stopper and wrapper.

**dishonest**, in relation to conduct engaged in by a person, means dishonest according to the standards of ordinary people.

**economic consequences for Australia** includes the following:

- (a) substantial damage to Australia's trading reputation;
- (b) a restriction on, or the closure of, access to one or more overseas markets for all goods or a kind of goods from Australia.

**eligible animal reproductive material** means prescribed goods that are animal reproductive material.

**eligible live animals** means prescribed goods that are live animals.



**enforcement body** has the same meaning as in the *Privacy Act 1988*.

**enforcement-related activity** has the same meaning as in the *Privacy Act 1988*.

**engage in conduct** means:

- (a) do an act; or
- (b) omit to perform an act.

**entered for export** has the meaning given by section 15.

**establishment** has the same meaning as premises.

**evidential material** has the same meaning as in the Regulatory Powers Act.

**examine** includes count, gauge, grade, measure and weigh.

**executive officer** of a body corporate means a person, by whatever name called and whether or not a director of the body corporate, who is concerned in, or takes part in, the management of the body corporate.

**expiry date**:

- (a) for the accreditation of a property—has the meaning given by subsection 82(4); or
- (b) for the registration of an establishment—has the meaning given by subsection 115(4); or
- (c) for an approved arrangement—has the meaning given by subsection 154(4); or
- (d) for an export licence—has the meaning given by subsection 194(4).

**export** means export from Australian territory to a place outside Australian territory.

Note: See also section 20 which provides for when goods are exported.

**export business** means a business that carries out export operations in relation to a kind of goods.

Section 12

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**export licence** means an export licence granted under Chapter 6.

**export operations** has the meaning given by section 16.

**export permit** means an export permit issued under Part 2 of Chapter 7.

**false trade description** has the meaning given by section 251.

**Federal Circuit Court** means the Federal Circuit Court of Australia.

**Federal Court** means the Federal Court of Australia.

**fee-bearing activities** has the meaning given by subsection 399(1).

**fish** means aquatic vertebrates and aquatic invertebrates but does not include mammals or birds.

**fit for human consumption** means safe and suitable for human consumption.

**food** includes:

- (a) any substance or thing of a kind used, or capable of being used, for human consumption (whether it is live, raw, prepared or partly prepared); and
- (b) any substance or thing of a kind used, or capable of being used, as an ingredient or additive in a substance or thing referred to in paragraph (a);

whether or not the substance or thing is in a condition fit for human consumption.

**foreign aircraft** means an aircraft other than an Australian aircraft.

**foreign person or body** means any of the following:

- (a) an individual who is not an Australian national or an Australian resident;
- (b) a body corporate that is not an Australian national or an Australian resident;
- (c) a body politic of a foreign country;

- (d) a trust, where the trustee, or a majority of the trustees, are covered by any or all of the above paragraphs.

***foreign vessel*** means a vessel other than an Australian vessel.

***goods*** means any of the following:

- (a) an animal or a plant;
- (b) an article, substance or thing (including reproductive material) derived from an animal or a plant, whether or not in combination with any other article, substance or thing;
- (c) food;
- (d) any other article, substance or thing.

***government certificate*** means a certificate (other than a tariff rate quota certificate) in relation to goods that are to be, or that have been, exported and that relates to any of the following:

- (a) matters in respect of which a country requires certification before goods of that kind may be imported into that country from Australian territory or from a part of Australian territory;
- (b) requirements of this Act that must be complied with before goods of that kind may be exported;
- (c) other matters concerning goods of that kind.

***husbandry activities***, in relation to a live animal, means activities relating to the care and maintenance of the animal (for example, housing, daily monitoring, feeding, cleaning of facilities and administration of medication).

***importing country requirement***, in relation to goods that are to be imported into a country from Australian territory or from a part of Australian territory, means a requirement of that country that must be met before the goods may be imported into that country from Australian territory or from that part of Australian territory.

***installation*** has the meaning given by section 17.

***integrity*** has the meaning given by section 18.

Section 12

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**International Plant Protection Convention** means the International Plant Protection Convention, done at Rome on 6 December 1951, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1952 No. 5 ([1952] ATS 5) and could in 2020 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**investigation warrant** means:

- (a) a warrant issued under section 70 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a provision mentioned in subsection 329(1); or
- (b) a warrant signed by an issuing officer under section 71 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a provision mentioned in subsection 329(1).

**issuing body** for a government certificate in relation to a kind of goods means a person or body that may issue a government certificate in relation to goods of that kind under section 63.

**issuing officer** means:

- (a) a magistrate; or
- (b) a Judge of a court of a State or Territory; or
- (c) a Judge of the Federal Court or the Federal Circuit Court.

**label** includes a tag, band, ticket, brand and pictorial or other descriptive matter.

**landing place** means any place where an aircraft can land, including:

- (a) an area of land or water; and
- (b) an area on a building or a vessel.

**late payment fee** has the meaning given by section 403.

**manager** of a property means the person who is responsible for the day-to-day management of the property.

**mark** includes a stamp, seal and label.

**monitoring warrant** means a warrant issued under section 32 of the Regulatory Powers Act as it applies in relation to this Act.

**natural resources** has the same meaning as in paragraph 4 of Article 77 of the United Nations Convention on the Law of the Sea.

Note: Paragraph 4 of Article 77 of the Convention provides as follows:

The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

**nominated export permit issuer**, in relation to a kind of prescribed goods, means a person who:

- (a) manages or controls export operations in relation to goods of that kind that are covered by an approved arrangement; and
- (b) is nominated in the approved arrangement as a person who may issue export permits for goods of that kind.

Note: A nominated export permit issuer in relation to a kind of prescribed goods may only issue export permits for goods of that kind if the power to issue export permits for goods of that kind has been subdelegated to the nominated export permit issuer under paragraph 288(2)(c).

**non-prescribed goods** means goods of a kind that are not prescribed goods.

**notice of intention to export** means a notice under section 243.

**occupier**, of an establishment where export operations in relation to goods are, were or will be carried out, has the meaning given by section 19.

**official mark** means a mark that is an official mark for the purposes of this Act under rules made for the purposes of subsection 255(1).

Section 12

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**official marking device** has the meaning given by subsection 257(1).

**permanently prohibited goods** means goods the export of which is prohibited absolutely by Subdivision A of Division 2 of Part 1 of Chapter 2.

**person** has a meaning affected by sections 421, 422 and 423.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**plant** means a live plant or a dead plant, and includes any part of a plant.

**port** includes a harbour.

**PPSA security interest** means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of **security interest**);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*.

**premises** includes the following:

- (a) a structure, building or conveyance;
- (b) a place (whether or not enclosed or built on), including a place situated underground or under water;
- (c) a part of a thing referred to in paragraph (a) or (b).

Note: **Premises** does not include a conveyance in Part 4 of Chapter 10 (compliance and enforcement) (see section 332).

**prepare**, in relation to goods, includes the following:

- (a) admission of animals for slaughter, being animals from which goods are to be derived;
- (b) slaughter or kill animals from which goods are to be derived;
- (c) dress carcasses from which goods are to be derived;
- (d) take (whether from the wild or otherwise):
  - (i) fish; or
  - (ii) fish from which goods are to be derived;
- (e) process, pack and store goods;
- (f) treat goods;
- (g) handle and load goods.

Note: **Take**, in relation to fish, means catch, capture, or harvest (see the definition of **take** in this section).

**prescribed agriculture law** means a law (other than this Act) that is administered by the Minister and is prescribed by the rules.

**prescribed export conditions** means conditions prescribed by rules made for the purposes of section 29.

**prescribed goods** means goods of a kind prescribed by rules made for the purposes of subsection 28(1), but does not include a kind of goods in the circumstances prescribed by rules made for the purposes of subsection 28(4).

Note: The rules may prescribe a class of goods for the purposes of subsection 28(1) or (4).

**produce**, in relation to goods, includes the following:

- (a) pick or harvest (whether from the wild or otherwise):
  - (i) goods; or
  - (ii) goods from which goods are to be derived;
- (b) capture or take (whether from the wild or otherwise):
  - (i) goods other than fish; or
  - (ii) goods (other than fish) from which goods are to be derived;
- (c) propagate, rear, keep or breed (including as part of aquaculture operations):

Section 12

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- (i) fish; or
- (ii) fish from which goods are to be derived;
- (d) breed, or carry out husbandry activities in relation to:
  - (i) live animals; or
  - (ii) live animals from which goods are to be derived;
- (e) grow:
  - (i) plants; or
  - (ii) plants from which goods are to be derived.

**property** has the same meaning as premises.

**protected information** means information obtained under, or in accordance with, this Act.

**protected person** has the meaning given by subsection 430(4).

**registered establishment** means an establishment that is registered under Chapter 4.

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**related provision** means the following:

- (a) a provision of this Act that creates an offence;
- (b) a civil penalty provision of this Act;
- (c) a provision of the *Crimes Act 1914* or the *Criminal Code* that relates to this Act and creates an offence.

**relevant Commonwealth liability** means:

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

Note: A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a provision of this Act in certain circumstances (see section 431).

**relevant court** means:

- (a) the Federal Court; or



- (b) the Federal Circuit Court; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

***relevant person:***

- (a) for an audit under Part 1 of Chapter 9—has the meaning given by section 269; or
- (b) for an assessment of goods under Part 2 of Chapter 9—has the meaning given by section 278; or
- (c) for a reviewable decision referred to in column 1 of an item in the table in subsection 381(1)—means the person referred to in column 3 of that item; or
- (d) for a reviewable decision prescribed by rules made for the purposes of subsection 381(2)—means the person specified by the rules as the relevant person for that decision.

***relevant premises***, in Part 5 of Chapter 10, has the meaning given by section 345.

***reviewable decision*** has the meaning given by subsections 381(1) and (2).

***rules*** means rules made under section 432.

***secondary permissible purpose*** means a purpose of:

- (a) achieving the objects of this Act; or
- (b) administering or enforcing any of the following:
  - (i) a prescribed agriculture law;
  - (ii) another Australian law, to the extent that the law relates to public health, food safety, biosecurity, the export of goods from Australian territory, the health and welfare of live animals, or the health and condition of animal reproductive material.

***Secretary*** means the Secretary of the Department.

***sensitive information*** means information or an opinion about an individual's criminal record that is also personal information.

Section 12

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**State or Territory authorised officer** means an authorised officer who is an officer or employee of a State or Territory body.

**State or Territory body** includes a Department of State, or an authority, of a State or Territory.

**take**, in relation to fish, means catch, capture, or harvest.

**tariff rate quota certificate** means a certificate provided for by rules made for the purposes of section 264.

**temporary prohibition determination** means a determination made under paragraph 24(1)(a) or (b).

**third party authorised officer** means a person who is authorised under paragraph 291(6)(a) to be a third party authorised officer under this Act.

**this Act** includes:

- (a) legislative instruments made under this Act; and
- (b) the Regulatory Powers Act as it applies in relation to this Act.

**trade description** has the meaning given by subsections 246(1) and (2).

**United Nations Convention on the Law of the Sea** means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, as in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1994 No. 31 ([1994] ATS 31) and could in 2020 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**use**, in relation to information, includes make a record of.

**vessel**:

- (a) means any kind of vessel used in navigation by water, however propelled or moved, including the following:
  - (i) a barge or other floating craft;

- (ii) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water; and
- (b) includes:
  - (i) an installation; and
  - (ii) any floating structure.

### **13 Meaning of *associate***

- (1) *Associate* of a person (the *first person*) includes each of the following:
  - (a) a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of:
    - (i) the first person; or
    - (ii) any corporation of which the first person is an officer or employee or in which the first person holds shares;
  - (b) a spouse, de facto partner, child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of the first person;
  - (c) a child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of a spouse or de facto partner of the first person;
  - (d) any other person not mentioned in paragraph (a), (b) or (c) who is or was:
    - (i) directly or indirectly concerned in; or
    - (ii) in a position to control or influence the conduct of; a business or undertaking of:
      - (iii) the first person; or
      - (iv) a corporation of which the first person is an officer or employee, or in which the first person holds shares;
  - (e) a corporation:
    - (i) of which the first person, or any of the other persons mentioned in paragraphs (a), (b), (c) and (d), is an officer or employee; or
    - (ii) in which the first person, or any of those other persons, holds shares;

Section 14

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- (f) if the first person is a body corporate—another body corporate that is a related body corporate (within the meaning of the *Corporations Act 2001*) of the first person.
- (2) Without limiting who is a child of another person for the purposes of this Act, a person is the **child** of another person if the person is:
  - (a) a stepchild or adopted child of the other person; or
  - (b) a child of the other person within the meaning of the *Family Law Act 1975*.
- (3) Without limiting who is a stepchild of another person for the purposes of this Act, a child of a de facto partner of the other person is the **stepchild** of the other person if the child would be the other person's stepchild except that the other person is not legally married to the partner.
- (4) Without limiting who is a parent of another person for the purposes of this Act, a person is the **parent** of another person if the other person is a child of the person because of the definition of **child** in subsection (2).
- (5) For the purposes of this Act, if one person is the child of another person because of the definition of **child** in subsection (2), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

**14 Meaning of *Australian territory***

A reference in a provision of this Act to ***Australian territory*** is a reference to:

- (a) Australia; and
- (b) the exclusive economic zone adjacent to Australia; and
- (c) the waters above the continental shelf adjacent to Australia; and
- (d) each external Territory to which the provision extends under paragraph 8(2)(a); and
- (e) each area to which the provision extends under subparagraph 8(2)(b)(i); and

- (f) the waters above each area to which the provision extends under subparagraph 8(2)(b)(ii); and
- (g) each area to which the provision extends under paragraph 8(2)(c).

Note: Under subsection 8(2), the rules may extend this Act, or any provisions of this Act, to an external Territory and to certain other areas.

### **15 Meaning of *entered for export***

Goods are *entered for export* if, in the course of the preparation or production of the goods for export, the goods are presented to, or information about the goods is given to:

- (a) an authorised officer; or
  - (b) another person who is authorised to exercise powers or perform functions under this Act in relation to the goods;
- for the purpose of the authorised officer or other person exercising powers or performing functions under this Act in relation to the goods.

### **16 Meaning of *export operations***

*Export operations* means any of the following:

- (a) operations to export goods;
- (b) operations to produce, or prepare, goods for export;
- (c) operations (other than operations referred to in paragraph (a) or (b)) in relation to goods for export before they are exported;
- (d) operations in relation to goods that have been exported up until the delivery of the goods to their final overseas destination or, in the case of live animals intended to be slaughtered, up until and including the point of slaughter;
- (e) any other operations in relation to the export of goods.

Examples of operations:

- (a) for the purposes of paragraph (b)—breeding or carrying out husbandry activities in relation to livestock from which meat for export is to be derived;

Section 17

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- (b) for the purposes of paragraph (c)—transporting goods, applying a trade description or official mark to goods, carrying out certification functions in relation to goods, and issuing an export permit for a kind of prescribed goods;
- (c) for the purposes of paragraph (d)—monitoring the goods during their journey to the importing country and up until their delivery to their final overseas destination or, in the case of live animals intended to be slaughtered, up until and including the point of slaughter;
- (d) for the purposes of paragraph (e)—operations for the purpose of assuring the supply chain relating to certain prescribed goods up until their delivery to their final overseas destination, and manufacturing official marks or official marking devices.

Note: See also section 20 which provides for when goods are exported.

### 17 Meaning of *installation*

An *installation* is a structure that:

- (a) is able:
  - (i) to float or to be floated; and
  - (ii) to move, or to be moved, as an entity from one place to another; and
- (b) is, or is to be, used wholly or principally in:
  - (i) exploring or exploiting natural resources (such as fish or minerals) with equipment on, or forming part of, the structure; or
  - (ii) operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (i) of this paragraph; and
- (c) either:
  - (i) is attached to, or resting on, the seabed; or
  - (ii) is attached semipermanently or permanently to a structure that is attached to, or resting on, the seabed.

Note: An installation is a vessel for the purposes of this Act (see paragraph (b) of the definition of *vessel* in section 12).

### **18 Meaning of *integrity***

The *integrity* of goods is ensured if the identity or composition of the goods, in relation to any condition, restriction or other description that applies in relation to the goods:

- (a) is ascertainable; and
- (b) is maintained without loss, addition or substitution; and
- (c) is not confused with that of any other goods.

### **19 Meaning of *occupier***

- (1) The *occupier* of a registered establishment is the person in whose name the establishment is registered.
- (2) An *occupier* of an establishment (other than a registered establishment) where export operations in relation to goods are, were or will be carried out, is:
  - (a) the person that operates, operated or will operate the business of carrying out export operations in relation to goods at the establishment; or
  - (b) a person that manages or controls, managed or controlled or will manage or control export operations carried out in relation to goods at the establishment.

## Division 2—Other interpretation provisions

### 20 When goods are exported

- (1) For the purposes of this Act, goods are exported when the conveyance transporting the goods from Australian territory commences its journey to a place outside Australian territory (whether or not that place is the intended final overseas destination for the goods).

Note: If goods are transported between landing places or ports in Australian territory, the goods are exported when the conveyance transporting the goods commences its journey from the last landing place or port in Australian territory before leaving Australian territory.

- (2) To avoid doubt, subsection (1) applies in relation to goods if:
- (a) the goods:
    - (i) were taken from waters (other than internal waters) in Australian territory; or
    - (ii) were harvested on the continental shelf adjacent to Australia; or
    - (iii) were harvested in an area on the continental shelf adjacent to an external Territory to which the Act extends under subparagraph 8(2)(b)(ii); and
  - (b) after being taken or harvested, the goods:
    - (i) were loaded onto a conveyance in Australian territory for transportation to a place outside Australian territory; or
    - (ii) were taken to a place outside Australian territory; and
  - (c) the goods were not unloaded at any time at a place on land in Australian territory.

### 21 Persons who manage or control export operations

For the purposes of this Act, a person is taken to be a person who manages or controls, or would manage or control, export operations if:



- (a) the person has, or would have, authority to direct the export operations, or an important or substantial part of the export operations; or
- (b) the person has, or would have, authority to direct another person who has, or would have, authority of the kind referred to in paragraph (a) in the exercise of that authority or proposed authority.

## Chapter 2—Exporting goods

### Part 1—Goods

#### Division 1—Introduction

##### 22 Simplified outline of this Part

Certain goods are prohibited absolutely from being exported from Australian territory. These goods are called permanently prohibited goods.

The Minister may, by legislative instrument (a temporary prohibition determination), determine:

- (a) that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, is prohibited absolutely for a specified period of up to 6 months; or
- (b) that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, to a specified place is prohibited for a specified period of up to 6 months.

The Minister may make a temporary prohibition determination only if the Minister is satisfied that the determination is necessary:

- (a) to protect human, animal or plant life or health; or
- (b) to secure compliance with an Australian law (other than this Act).

A temporary prohibition determination may be varied to extend the temporary prohibition period for further periods of up to 6 months.

The rules may prescribe kinds of goods (*prescribed goods*) for the purposes of this Act. In deciding whether to prescribe goods that are not animals, plants or food, the Secretary may have regard to relevant matters, including importing country requirements,

sanitary matters, Australian laws and standards, Australia's international rights and obligations and international standards.

The rules may:

- (a) prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, unless conditions prescribed by the rules are complied with; or
- (b) prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, to a specified place unless conditions prescribed by the rules are complied with.

A person may commit an offence or be liable to a civil penalty if:

- (a) permanently prohibited goods, or goods in relation to which a temporary prohibition determination applies, are exported; or
- (b) goods are exported, and intended to be imported into a particular place, and the export of the goods to that place is prohibited by a temporary prohibition determination; or
- (c) goods are exported in contravention of prescribed export conditions; or
- (d) the person makes false or misleading representations about goods that are entered for export.

## Division 2—Prohibited goods

### Subdivision A—Permanently prohibited goods

#### 23 Goods that are prohibited from export absolutely

The export from Australian territory of split vetch (being split seed of *Vicia sativa*) is prohibited absolutely.

Note 1: For *Australian territory*, see section 14.

Note 2: Division 4 sets out offences and civil penalty provisions for exporting permanently prohibited goods.

### Subdivision B—Temporarily prohibited goods

#### 24 Minister may temporarily prohibit export of goods from Australian territory, or from a part of Australian territory, for a period

- (1) The Minister may, by legislative instrument, determine:
- (a) that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, is prohibited absolutely for a specified period of up to 6 months; or
  - (b) that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, to a specified place is prohibited for a specified period of up to 6 months.

Note 1: A determination that is in force under paragraph (1)(a) or (b) is called a temporary prohibition determination.

Note 2: The temporary prohibition period may be extended under section 25.

Note 3: For *Australian territory*, see section 14.

- (2) The Minister may make a determination under paragraph (1)(a) or (b) only if the Minister is satisfied that the determination is necessary:

- (a) to protect human, animal or plant life or health; or
  - (b) to secure compliance with an Australian law (other than this Act).
- (3) A determination under paragraph (1)(a) or (b) must set out the reasons for making the determination.

Note: Division 4 sets out offences and civil penalty provisions for exporting goods in relation to which a temporary prohibition determination applies.

## **25 Variation of temporary prohibition determination**

- (1) The Minister may vary a temporary prohibition determination to extend the period specified in the determination for a further period of up to 6 months.
- (2) The Minister may vary a temporary prohibition determination under subsection (1) only if the Minister is satisfied that the variation is necessary:
  - (a) to protect human, animal or plant life or health; or
  - (b) to secure compliance with an Australian law (other than this Act).
- (3) The Minister may vary a temporary prohibition determination under subsection (1) more than once.
- (4) A determination varying a temporary prohibition determination must set out the reasons for making the variation.
- (5) This section does not otherwise limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a temporary prohibition determination.

## **26 Effect of temporary prohibition determination on government certificate or export permit**

### *Effect on government certificate*

- (1) If:
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**Section 27**

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- (a) a government certificate has been, or is, issued in relation to a kind of goods that are to be, or that have been, exported; and
- (b) a temporary prohibition determination applies in relation to goods of that kind;

then the government certificate is taken to have been revoked on the date the temporary prohibition determination takes effect or immediately after the certificate is issued (whichever is later).

*Effect on export permit*

(2) If:

- (a) an export permit has been, or is, issued for a kind of prescribed goods that are to be exported; and
- (b) a temporary prohibition determination applies in relation to goods of that kind;

then the export permit is taken to have been revoked on the date the temporary prohibition determination takes effect or immediately after the permit is issued (whichever is later).

**27 Temporary prohibition determination prevails over inconsistent rules**

If a temporary prohibition determination is inconsistent with the rules:

- (a) the determination prevails; and
- (b) the rules have no effect to the extent that they are inconsistent with the determination.

## **Division 3—Prescribed goods and conditions of export**

### **28 Rules may prescribe goods for the purposes of this Act**

- (1) The rules may prescribe kinds of goods (*prescribed goods*) for the purposes of this Act.
- (2) Rules made for the purposes of subsection (1) may prescribe a kind of goods by reference to particular circumstances, including, for example:
  - (a) a place to which the goods are, or are intended to be, exported; and
  - (b) the intended use of the goods.
- (3) In deciding whether to prescribe a kind of goods referred to in paragraph (d) of the definition of *goods* in section 12, the Secretary may have regard to the following matters:
  - (a) any importing country requirements relating to goods of that kind;
  - (b) sanitary matters (being matters relating to food safety, animal health or human health) and phytosanitary matters (being matters relating to plant health) relating to goods of that kind;
  - (c) any Australian laws and standards relating to goods of that kind;
  - (d) Australia's rights and obligations relating to goods of that kind under any international agreements to which Australia is a party;
  - (e) any international standards relating to goods of that kind;
  - (f) any other matter the Secretary considers relevant.
- (4) The rules may provide that a kind of goods is taken not to be prescribed goods for the purposes of this Act in the circumstances prescribed by the rules.

Section 29

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**29 Rules may prohibit export of prescribed goods subject to conditions**

- (1) The rules may:
- (a) prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, unless conditions prescribed by the rules are complied with; or
  - (b) prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, to a specified place unless conditions prescribed by the rules are complied with.

Note 1: The rules are made by the Secretary under section 432. They are a disallowable legislative instrument and are subject to sunseting under the *Legislation Act 2003*.

Note 2: The Minister may, by legislative instrument, give directions to the Secretary in relation to the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432 (see subsection 289(1)).

Note 3: For *Australian territory*, see section 14.

Note 4: Division 4 sets out offences and civil penalty provisions for exporting prescribed goods in contravention of prescribed export conditions.

- (2) Without limiting subsection (1), the rules may prescribe conditions in relation to the export of prescribed goods, or the export of prescribed goods to a specified place, that:
- (a) require export operations to be carried out in relation to the goods:
    - (i) at an accredited property; or
    - (ii) at a registered establishment; or
    - (iii) at another kind of premises prescribed by the rules; or
    - (iv) in accordance with an approved arrangement; or
    - (v) in accordance with an export licence; or
    - (vi) in any other way prescribed by the rules; or
  - (b) require the exporter to hold one or more of the following:
    - (i) an approved arrangement covering the goods;
    - (ii) an export licence covering the goods;



- (iii) a government certificate in relation to the goods;
  - (iv) an export permit for the goods;
  - (v) another kind of permission, consent or approval, granted as prescribed by the rules, to export the goods; or
- (c) relate to export operations to be carried out in relation to the goods, including in relation to the following matters:
- (i) premises, equipment and facilities to be used to produce or prepare the goods;
  - (ii) hygiene;
  - (iii) loading and transport of the goods;
  - (iv) identification, tracing, recall and transfer of the goods;
  - (v) ensuring the integrity of the goods;
  - (vi) trade descriptions;
  - (vii) official marks.
- (3) Also, without limiting subsection (1), the rules may prescribe conditions in relation to the export of prescribed goods, or the export of prescribed goods to a specified place, that are required to be complied with in respect of matters or things not related to the goods themselves.
- (4) Despite subsection 14(2) of the *Legislation Act 2003*, rules made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is published on the Department's website.

Note: The Department's website is <http://www.agriculture.gov.au>.

## Division 4—Offences and civil penalty provisions

### 30 Exporting goods that are subject to absolute prohibition on export—basic contravention

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) either:
    - (i) the goods are permanently prohibited goods; or
    - (ii) the export of the goods is prohibited absolutely by a temporary prohibition determination.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

### 31 Exporting goods that are subject to absolute prohibition on export—intention to obtain commercial advantage

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) either:

- (i) the goods are permanently prohibited goods; or
- (ii) the export of the goods is prohibited absolutely by a temporary prohibition determination; and
- (c) the person intends to obtain a commercial advantage over the person's competitors, or potential competitors, as a result of exporting the goods.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 30(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 30(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

**Section 32**

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*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**32 Exporting goods that are subject to absolute prohibition on export—economic consequences for Australia**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) either:
    - (i) the goods are permanently prohibited goods; or
    - (ii) the export of the goods is prohibited absolutely by a temporary prohibition determination; and
  - (c) the export of the goods causes, or has the potential to cause, economic consequences for Australia.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 30(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 30(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**33 Conveying or possessing goods that are subject to absolute prohibition on export and are intended to be exported etc.**

*Person intends to export goods*

- (1) A person contravenes this subsection if:
- (a) the person conveys, or has in the person's possession, goods; and
  - (b) the person intends to export the goods; and
  - (c) either:
    - (i) the goods are permanently prohibited goods; or
    - (ii) the export of the goods is prohibited absolutely by a temporary prohibition determination.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

**Section 33**

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*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

*Person knows that goods are intended to be exported*

- (5) A person contravenes this subsection if:
- (a) the person conveys, or has in the person's possession, goods; and
  - (b) the person knows that the goods are intended to be exported; and
  - (c) either:
    - (i) the goods are permanently prohibited goods; or
    - (ii) the export of the goods is prohibited absolutely by a temporary prohibition determination.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 370).

*Fault-based offence*

- (6) A person commits an offence if the person contravenes subsection (5).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (7) For the purposes of subsection (6), strict liability applies to paragraph (5)(c).

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 960 penalty units.

**34 Exporting goods to a temporarily prohibited place—basic contravention**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
  - (c) the export of the goods to that place is prohibited by a temporary prohibition determination.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

Section 35

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**35 Exporting goods to a temporarily prohibited place—intention to obtain commercial advantage**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
  - (c) the export of the goods to that place is prohibited by a temporary prohibition determination; and
  - (d) the person intends to obtain a commercial advantage over the person's competitors, or potential competitors, as a result of exporting the goods to that place.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 34(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and



- (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 34(2); and
- (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**36 Exporting goods to a temporarily prohibited place—economic consequences for Australia**

- (1) A person contravenes this subsection if:
  - (a) the person exports goods; and
  - (b) the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
  - (c) the export of the goods to that place is prohibited by a temporary prohibition determination; and
  - (d) the export of the goods to that place causes, or has the potential to cause, economic consequences for Australia.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or

**Section 37**

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- (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 34(2), if:
  - (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 34(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**37 Conveying or possessing goods that are intended to be exported to a temporarily prohibited place etc.**

*Person intends to export goods to temporarily prohibited place*

- (1) A person contravenes this subsection if:
  - (a) the person conveys, or has in the person's possession, goods; and
  - (b) the person intends to export the goods to a particular place; and

- (c) the export of the goods to that place is prohibited by a temporary prohibition determination.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

*Person knows that goods are intended to be exported to temporarily prohibited place*

- (5) A person contravenes this subsection if:
- (a) the person conveys, or has in the person's possession, goods; and
  - (b) the person knows that the goods are intended to be exported to a particular place; and
  - (c) the export of the goods to that place is prohibited by a temporary prohibition determination.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 370).

*Fault-based offence*

- (6) A person commits an offence if the person contravenes subsection (5).

**Section 38**

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Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (7) For the purposes of subsection (6), strict liability applies to paragraph (5)(c).

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 960 penalty units.

**38 Exporting prescribed goods—non-compliance with prescribed export conditions—basic contravention**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods is prohibited unless prescribed export conditions are complied with; and
  - (d) prescribed export conditions were not complied with.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b), (c) and (d).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

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**39 Exporting prescribed goods—non-compliance with prescribed export conditions—intention to obtain commercial advantage**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods is prohibited unless prescribed export conditions are complied with; and
  - (d) prescribed export conditions were not complied with; and
  - (e) the person intends to obtain a commercial advantage over the person's competitors, or potential competitors, as a result of exporting the goods.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b), (c) and (d).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 38(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and

Section 40

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- (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 38(2); and
- (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**40 Exporting prescribed goods—non-compliance with prescribed export conditions—economic consequences for Australia**

- (1) A person contravenes this subsection if:
  - (a) the person exports goods; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods is prohibited unless prescribed export conditions are complied with; and
  - (d) prescribed export conditions were not complied with; and
  - (e) the export of the goods causes, or has the potential to cause, economic consequences for Australia.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or

- (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b), (c) and (d).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 38(2), if:
  - (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 38(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

#### **41 Conveying or possessing prescribed goods that are intended to be exported in contravention of conditions etc.**

*Person intends to export goods in contravention of conditions*

- (1) A person contravenes this subsection if:
  - (a) the person conveys, or has in the person's possession, goods; and
  - (b) the goods are prescribed goods; and

**Section 41**

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- (c) the export of the goods is prohibited unless prescribed export conditions are complied with; and
- (d) the person intends to export the goods; and
- (e) the export of the goods would contravene the prescribed export conditions.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

*Goods are intended to be exported in contravention of conditions*

- (4) A person contravenes this subsection if:
- (a) the person conveys, or has in the person's possession, goods; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods is prohibited unless prescribed export conditions are complied with; and
  - (d) the person knows that the goods are intended to be exported; and
  - (e) the export of the goods would contravene the prescribed export conditions.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 370).



*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 960 penalty units.

**42 Exporting prescribed goods to a particular place—  
non-compliance with prescribed export conditions—basic  
contravention**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the goods are prescribed goods; and
  - (c) the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
  - (d) the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
  - (e) prescribed export conditions were not complied with.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b), (d) and (e).

Section 43

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*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**43 Exporting prescribed goods to a particular place—  
non-compliance with prescribed export conditions—  
intention to obtain commercial advantage**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the goods are prescribed goods; and
  - (c) the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
  - (d) the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
  - (e) prescribed export conditions were not complied with; and
  - (f) the person intends to obtain a commercial advantage over the person's competitors, or potential competitors, as a result of exporting the goods to that place.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
- (b) if the person is a body corporate—the amount under section 50A.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b), (d) and (e).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 42(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 42(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**44 Exporting prescribed goods to a particular place—  
non-compliance with prescribed export conditions—  
economic consequences for Australia**

- (1) A person contravenes this subsection if:
- (a) the person exports goods; and
  - (b) the goods are prescribed goods; and
  - (c) the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
  - (d) the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and

**Section 44**

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- (e) prescribed export conditions were not complied with; and
- (f) the export of the goods to that place causes, or has the potential to cause, economic consequences for Australia.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b), (d) and (e).

*Alternative verdict*

- (4) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 42(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 42(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or

- (b) if the person is a body corporate—the amount under section 50A.

**45 Conveying or possessing prescribed goods that are intended to be exported to a particular place in contravention of conditions etc.**

*Person intends to export goods to prohibited place in contravention of conditions*

- (1) A person contravenes this subsection if:
- (a) the person conveys, or has in the person's possession, goods; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods to a particular place is prohibited unless prescribed export conditions are complied with; and
  - (d) the person intends to export the goods to that place; and
  - (e) the export of the goods to that place would contravene the prescribed export conditions.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

Section 46

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*Goods are intended to be exported to prohibited place in contravention of conditions*

- (4) A person contravenes this subsection if:
- (a) the person conveys, or has in the person's possession, goods; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods to a particular place is prohibited unless prescribed export conditions are complied with; and
  - (d) the person knows that the goods are intended to be exported to that place; and
  - (e) the export of the goods to that place would contravene the prescribed export conditions.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 370).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 960 penalty units.

**46 Producing or preparing prescribed goods or other goods at certain premises in contravention of conditions—general**

- (1) A person contravenes this subsection if:
- (a) the person is:
    - (i) the occupier of a registered establishment; or
    - (ii) the manager of an accredited property; or

- (iii) the occupier of premises other than a registered establishment or an accredited property; and
- (b) goods are produced or prepared at the registered establishment, accredited property or other premises; and
- (c) the goods are prescribed goods; and
- (d) the goods are exported after being produced or prepared at the registered establishment, accredited property or other premises (with or without further preparation); and
- (e) the export of the goods is prohibited unless prescribed export conditions are complied with; and
- (f) one or more of the prescribed export conditions applies in relation to:
  - (i) the person; or
  - (ii) the registered establishment, accredited property or other premises; or
  - (iii) the production or preparation of the goods at the registered establishment, accredited property or other premises; and
- (g) one or more of those prescribed export conditions is contravened.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(c), (e), (f) and (g).

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Section 47

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Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**47 Producing or preparing prescribed goods or other goods at certain premises in contravention of conditions—goods to be exported to a particular place**

- (1) A person contravenes this subsection if:
- (a) the person is:
    - (i) the occupier of a registered establishment; or
    - (ii) the manager of an accredited property; or
    - (iii) the occupier of premises other than a registered establishment or an accredited property; and
  - (b) goods are produced or prepared at the registered establishment, accredited property or other premises; and
  - (c) the goods are prescribed goods; and
  - (d) the goods are exported to a particular place after being produced or prepared at the registered establishment, accredited property or other premises (with or without further preparation); and
  - (e) the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
  - (f) one or more of the prescribed export conditions applies in relation to:
    - (i) the person; or
    - (ii) the registered establishment, accredited property or other premises; or
    - (iii) the production or preparation of the goods at the registered establishment, accredited property or other premises; and



- (g) one or more of those prescribed export conditions is contravened.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(c), (e), (f) and (g).

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**48 Making false or misleading representation about prescribed goods that are entered for export—general**

- (1) A person contravenes this subsection if:
- (a) goods are entered for export by the person; and
  - (b) the goods are prescribed goods; and
  - (c) the export of the goods is prohibited unless prescribed export conditions are complied with; and
  - (d) at the time the goods are entered for export:

**Section 49**

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- (i) the person represents (either expressly or by necessary implication) that the prescribed export conditions applicable, at or before that time, in relation to the export of goods have been complied with; and
- (ii) the person does so knowing that the representation is false or misleading.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b) and (c).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**49 Making false or misleading representation about prescribed goods that are entered for export to a particular place**

- (1) A person contravenes this subsection if:
- (a) goods are entered for export by the person; and
  - (b) the goods are prescribed goods; and
  - (c) the goods are to be exported to a particular place; and
  - (d) the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
  - (e) at the time the goods are entered for export:
    - (i) the person represents (either expressly or by necessary implication) that the prescribed export conditions

applicable, at or before that time, in relation to the export of goods to that place have been complied with; and

- (ii) the person does so knowing that the representation is false or misleading.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b) and (d).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**50 Making false or misleading representation about non-prescribed goods that are entered for export**

- (1) A person contravenes this subsection if:
- (a) goods are entered for export by the person; and
  - (b) the goods are non-prescribed goods; and
  - (c) at the time the goods are entered for export:
    - (i) the person makes a representation (either expressly or by necessary implication) in relation to any matters that are to be stated in a government certificate in relation to the goods (for example that the goods meet an importing country requirement relating to the goods); and

**Section 50A**

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- (ii) the person does so knowing that the representation is false or misleading.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**50A Penalties for certain contraventions by bodies corporate**

- (1) This section has effect for the purposes of the following provisions:
- (a) subsections 31(2) and (5);
  - (b) subsections 32(2) and (5);
  - (c) subsections 35(2) and (5);
  - (d) subsections 36(2) and (5);
  - (e) subsections 39(2) and (5);
  - (f) subsections 40(2) and (5);
  - (g) subsections 43(2) and (5);
  - (h) subsections 44(2) and (5);
  - (i) subsections 217(2), (4), (6) and (8).
- (2) The amount of the penalty for a contravention by the body corporate (the **first body**) of a provision referred to in

subsection (1) is an amount not more than the greatest of the following:

- (a) 20,000 penalty units;
  - (b) if the first body, and any related body corporate of the first body, has obtained, directly or indirectly, a benefit that is reasonably attributable to the conduct constituting the contravention, and the relevant court can determine the value of that benefit—3 times the value of that benefit;
  - (c) if the relevant court cannot determine the value of a benefit referred to in paragraph (b) or no such benefit has been obtained—10% of the annual turnover of the first body during the period (the *turnover period*) of 12 months ending at the end of the month in which the first body committed, or began committing, the contravention.
- (3) For the purposes of this section, the *annual turnover* of the first body, during the turnover period, is the sum of the values of all the supplies that the first body, and any related body corporate of the first body, have made, or are likely to make, during that period, other than the following supplies:
- (a) supplies made from the first body to any related body corporate of the first body;
  - (b) supplies made from any related body corporate of the first body to the first body;
  - (c) supplies that are input taxed;
  - (d) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
  - (e) supplies that are not made in connection with an enterprise that the first body carries on.
- (4) Expressions used in subsection (3) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.
- (5) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.
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## Part 2—Exemptions

### Division 1—Introduction

#### 51 Simplified outline of this Part

The Secretary may grant an exemption from one or more provisions of this Act in relation to prescribed goods that are to be exported:

- (a) as a commercial sample; or
- (b) for experimental purposes; or
- (c) in exceptional circumstances; or
- (d) in special commercial circumstances; or
- (e) in other circumstances prescribed by the rules.

The Secretary may also grant an exemption from one or more provisions of this Act in relation to prescribed goods that are to be exported to a particular country if the Secretary is satisfied that it is not necessary for those provisions to be complied with for the purpose of ensuring that importing country requirements relating to the goods are met.

An exemption may be granted subject to conditions which may be varied. An exemption must not be varied.

An exemption may be revoked.

#### 52 Application of this Part

- (1) This Part applies in relation to a kind of prescribed goods (in this Part called *relevant goods*) that are to be exported:
  - (a) as a commercial sample; or
  - (b) for experimental purposes; or
  - (c) in exceptional circumstances; or

- (d) in special commercial circumstances; or
  - (e) in other circumstances prescribed by the rules.
- (2) For the purposes of subsection (1), the rules may prescribe the meaning of any of the following terms:
- (a) commercial sample;
  - (b) experimental purposes;
  - (c) exceptional circumstances;
  - (d) special commercial circumstances.
- (3) This Part also applies to a kind of prescribed goods (in this Part also called *relevant goods*) that are to be exported to a particular country (the *importing country*) if the Secretary is satisfied that it is not necessary for one or more of the provisions of this Act to be complied with for the purpose of ensuring that importing country requirements relating to the goods are met.

## Division 2—Exemptions

### 53 Application for exemption

- (1) An application for an exemption from one or more provisions of this Act in relation to relevant goods may be made to the Secretary by any of the following:
- (a) a person who wishes to export relevant goods;
  - (b) the manager of an accredited property where export operations in relation to relevant goods are or will be carried out;
  - (c) the occupier of a registered establishment where export operations in relation to relevant goods are or will be carried out;
  - (d) the holder of an approved arrangement that covers export operations in relation to relevant goods;
  - (e) the holder of an export licence that covers export operations in relation to relevant goods.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in section 12).

- (2) However, an application for an exemption must not be made in relation to:
- (a) goods that are permanently prohibited goods; or
  - (b) goods the export of which is prohibited by a temporary prohibition determination.
- (3) An application for an exemption must:
- (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and



- (c) set out the basis on which the exemption is sought; and
- (d) include the information (if any) prescribed by the rules; and
- (e) be accompanied by any documents prescribed by the rules; and
- (f) be made:
  - (i) within the period prescribed by the rules; or
  - (ii) if the Secretary allows a different period—within that period.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

- (4) The Secretary may accept any information or document previously given to the Secretary in connection with an application made under this Act, or a notice of intention to export a consignment of prescribed goods given under this Act, as satisfying any requirement to give that information or document under subsection (3).
- (5) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (3) for the application.

## 54 Secretary must decide whether to grant exemption

### *Secretary must decide whether to grant exemption*

- (1) On receiving an application made under section 53 for an exemption, the Secretary must decide:
  - (a) to grant the exemption; or
  - (b) to refuse to grant the exemption.

Note: An application that does not comply with the requirements referred to in subsection 53(3) for the application is taken not to have been made (see subsection 53(5)).

**Section 55**

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*Secretary may request further information or documents*

- (2) The Secretary may, in writing, request the applicant to give the Secretary further specified information or documents relevant to the application.

*Grounds for granting exemption*

- (3) The Secretary may grant the exemption if the Secretary is satisfied, having regard to any matter prescribed by the rules or any other matter that the Secretary considers relevant, that:
- (a) any requirements prescribed by the rules are met; and
  - (b) it is appropriate to grant the exemption.

Note: An exemption must not be varied (see subsection 58(1)).

**55 Exemption may be granted subject to conditions**

- (1) The Secretary may grant an exemption under paragraph 54(1)(a) in relation to relevant goods, subject to any conditions that the Secretary considers are necessary.

Note: Conditions of an exemption may be varied (see section 58).

- (2) In considering whether it is necessary to impose conditions on an exemption, the Secretary must have regard to the matters prescribed by the rules.

*Fault-based offence*

- (3) A person commits an offence if:
- (a) the person is the holder of an exemption in force under this Part; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes a condition of the exemption.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if:
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- (a) the person is the holder of an exemption in force under this Part; and
- (b) the person contravenes a condition of the exemption.

Civil penalty: 600 penalty units.

## **56 Notice of decision**

### *Instrument of exemption*

- (1) If the Secretary decides to grant an exemption under paragraph 54(1)(a) in relation to relevant goods, the Secretary must give the applicant for the exemption an instrument of exemption stating the following:
  - (a) the kind of goods covered by the exemption;
  - (b) if applicable, each importing country covered by the exemption;
  - (c) the basis on which the exemption has been granted;
  - (d) the provisions of this Act covered by the exemption;
  - (e) the date (which must not be retrospective) when the exemption takes effect;
  - (f) the period during which the exemption remains in force (as prescribed by rules made for the purposes of paragraph 57(b));
  - (g) any conditions of the exemption;
  - (h) any other information prescribed by the rules.
- (2) An instrument of exemption given under subsection (1) is not a legislative instrument.

### *Notice of refusal*

- (3) If the Secretary decides to refuse to grant an exemption under paragraph 54(1)(b), the Secretary must notify the applicant, in writing, of the decision. The notice must include the reasons for the decision.

Section 57

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**57 Period of effect of exemption**

An exemption granted under paragraph 54(1)(a):

- (a) takes effect on the date stated in the instrument of exemption under paragraph 56(1)(e); and
- (b) remains in force as prescribed by the rules unless it is revoked under section 59.

**58 Variation of conditions of exemption**

- (1) Except as provided by subsection (2), an exemption that is in force under this Part must not be varied.

Note: If changes to an exemption are needed, an application for a new exemption must be made.

- (2) If the Secretary considers it necessary to do so, the Secretary may vary the conditions of an exemption that is in force under this Part (including by imposing new conditions).
- (3) In considering whether it is necessary to vary the conditions of an exemption, the Secretary must have regard to the matters prescribed by the rules.
- (4) If the Secretary varies the conditions of an exemption, the Secretary must give the holder of the exemption a written notice stating the following:
  - (a) the varied conditions and any new conditions;
  - (b) the reason for varying the conditions;
  - (c) the date the varied conditions take effect;
  - (d) any other information prescribed by the rules.

**59 Revocation of exemption**

- (1) The Secretary may revoke an exemption that is in force under this Part.
- (2) In considering whether to revoke an exemption, the Secretary must have regard to the matters prescribed by the rules.

- (3) If the Secretary decides to revoke an exemption, the Secretary must give the holder of the exemption a written notice stating the following:
- (a) that the exemption is to be revoked;
  - (b) the reasons for the revocation;
  - (c) the date the revocation is to take effect.

## **60 Effect of exemption**

If an exemption from one or more provisions of this Act (the *exempted provisions*) is in force under this Part in relation to relevant goods, the exempted provisions do not apply in relation to the export of the goods.

## **Part 3—Government certificates**

### **Division 1—Introduction**

#### **61 Simplified outline of this Part**

The rules may make provision for and in relation to the issue of government certificates in relation to prescribed goods and non-prescribed goods that are to be, or that have been, exported.

In deciding whether to make rules in relation to goods that are not animals, plants or food, the Secretary may have regard to relevant matters, including importing country requirements, sanitary matters, Australian laws and standards, Australia's international rights and obligations and international standards.

A person may apply to an issuing body for the issue of a government certificate in relation to goods that are to be, or that have been, exported. The issuing body is a person or body prescribed by the rules in relation to the goods or, if no person or body is prescribed in relation to the goods, the issuing body is the Secretary.

The issuing body must decide whether to issue a government certificate. The Secretary may exercise certain powers in relation to an application for a government certificate.

Certain issuing bodies may charge a fee in relation to things done in the performance of the issuing body's functions or the exercise of the issuing body's powers under this Act.

A government certificate may be issued electronically or in another form that is acceptable to the relevant importing country.

A government certificate has effect for a particular period.

A government certificate may be revoked and may be required to be returned.

## Division 2—Rule-making powers

### 62 Rules may make provision for and in relation to government certificates

- (1) The rules may make provision for and in relation to the issue of government certificates in relation to goods that are to be, or that have been, exported.
- (2) Without limiting subsection (1), the rules:
  - (a) may specify:
    - (i) kinds of goods in relation to which a government certificate may be issued; and
    - (ii) kinds of goods in relation to which a government certificate must not be issued; and
    - (iii) kinds of government certificates that may be issued in relation to specified kinds of goods; and
  - (b) may make provision for and in relation to any of the following:
    - (i) applications for a government certificate in relation to a kind of goods;
    - (ii) the matters that may be stated in a government certificate in relation to a kind of goods;
    - (iii) requirements that must be complied with in relation to a kind of goods before a government certificate in relation to goods of that kind may be issued.
- (3) In deciding whether to make rules for the purposes of subparagraph (2)(a)(i) specifying a kind of non-prescribed goods referred to in paragraph (d) of the definition of *goods* in section 12, the Secretary may have regard to the following matters:
  - (a) any importing country requirements relating to goods of that kind;
  - (b) sanitary matters (being matters relating to food safety, animal health or human health) and phytosanitary matters (being matters relating to plant health) relating to goods of that kind;



- (c) any Australian laws and standards relating to goods of that kind;
- (d) Australia's rights and obligations relating to goods of that kind under any international agreements to which Australia is a party;
- (e) any international standards relating to goods of that kind;
- (f) any other matter the Secretary considers relevant.

### **63 Issuing bodies**

- (1) The issuing body for a government certificate in relation to a kind of goods that are to be, or that have been, exported is:
  - (a) a person or body prescribed by the rules in relation to goods of that kind; or
  - (b) if no person or body is prescribed by the rules in relation to goods of that kind—the Secretary.
- (2) For the purposes of subsection (1), the rules may provide that one or more of the following is an issuing body for a government certificate in relation to a kind of goods that are to be, or that have been, exported:
  - (a) the Secretary;
  - (b) a person or body that is covered by an approved arrangement that provides for the person or body to issue government certificates in relation to goods of that kind;
  - (c) a specified person or body.

### **64 Certain issuing bodies may charge fees**

- (1) An issuing body for a government certificate may charge a fee under this section in relation to things done in the performance of the issuing body's functions or the exercise of the issuing body's powers under this Act.
- (2) A fee must not be such as to amount to taxation.
- (3) This section does not apply in relation to the Secretary.

**Chapter 2** Exporting goods  
**Part 3** Government certificates  
**Division 2** Rule-making powers

**Section 64**

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Note: Section 399 provides for fees to be charged in relation to the performance of functions or the exercise of powers by the Secretary as an issuing body.

## **Division 3—Issue of government certificate**

### **65 Application for government certificate**

- (1) A person may apply to an issuing body for a government certificate in relation to a kind of goods that are to be, or that have been, exported.
- (2) An application for a government certificate must:
  - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and
  - (c) include the information (if any) prescribed by the rules; and
  - (d) be accompanied by any documents prescribed by the rules.

Note 1: The Secretary may approve a single form that may be used to apply for an export permit for a kind of prescribed goods and a government certificate in relation to the goods (see subsection 239(4)).

Note 2: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

- (3) The issuing body may accept any information or document previously given to an issuing body in connection with an application made under this Act, or a notice of intention to export a consignment of goods given under this Act, as satisfying any requirement to give that information or document under subsection (2).
- (4) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (2) for the application.

Section 66

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**66 Additional or corrected information**

- (1) A person who has made an application to an issuing body under section 65 must comply with subsection (2) of this section if:
- (a) the person becomes aware that information included in the application, or information or a document given to the issuing body in relation to the application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The person must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to the issuing body's consideration of the application.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to give information to the issuing body under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**67 Issuing body must decide whether to issue government certificate**

- (1) On receiving an application made under section 65 for a government certificate in relation to a kind of goods, the issuing body must decide:
- (a) to issue the certificate; or
  - (b) to refuse to issue the certificate.

Note 1: An application that does not comply with the requirements referred to in subsection 65(2) for the application is taken not to have been made (see subsection 65(4)).

Note 2: A decision in relation to the application may be made by the operation of a computer program (see section 286).

- (2) The issuing body may, in writing, request the applicant to give the issuing body further specified information or documents relevant to the application.

Note: If the issuing body is the Secretary, the Secretary may also exercise powers under section 68.

*Grounds for refusing to issue government certificate*

- (3) The issuing body may refuse to issue a government certificate in relation to the goods if:
- (a) the issuing body is not satisfied, having regard to any matter that the issuing body considers relevant, that:
    - (i) the requirements of this Act in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country; or
    - (ii) any importing country requirements relating to the goods have been met, or will be met before the goods are imported into the importing country; or
    - (iii) the matters to be stated in the government certificate in relation to the goods are true and correct; or
  - (b) the issuing body reasonably believes that the applicant:
    - (i) made a false, misleading or incomplete statement in the application for the certificate; or
    - (ii) gave false, misleading or incomplete information or documents to the issuing body or to another person performing functions or exercising powers under this Act; or
    - (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law; or

Section 68

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- (c) any information or documents requested under subsection (2) are not given to the issuing body within a reasonable period after the request was made; or
- (d) the applicant refused to consent to a request by a person to enter premises of the applicant:
  - (i) to conduct an audit of export operations carried out in relation to the goods under Part 1 of Chapter 9; or
  - (ii) to carry out an assessment of the goods under Part 2 of that Chapter; or
- (e) the applicant refused to cooperate with a request made by the issuing body, or any other person performing functions or exercising powers under this Act, in relation to the goods; or
- (f) the issuing body reasonably believes that the applicant has contravened a requirement of this Act in relation to the goods; or
- (g) circumstances prescribed by the rules exist.

*Notice of refusal*

- (4) If the issuing body decides not to issue a government certificate in relation to the goods, the issuing body must notify the applicant, in writing, of the decision.

**68 Powers of Secretary in relation to application**

If an application for a government certificate in relation to a kind of goods is made to the Secretary under section 65, the Secretary may do anything the Secretary considers necessary in relation to the application, including the following:

- (a) request, in writing, the applicant, or another person who the Secretary considers may have information or documents relevant to the application, to give the Secretary further specified information or documents relevant to the application;
- (b) require an audit of export operations carried out in relation to the goods to be conducted under Part 1 of Chapter 9;

- (c) require an assessment of the goods to be carried out under Part 2 of Chapter 9;
- (d) request the applicant to give the Secretary a written statement, signed and dated by the applicant, verifying that:
  - (i) the requirements of this Act in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country; and
  - (ii) any importing country requirements relating to the goods have been met, or will be met before the goods are imported into the importing country; and
  - (iii) the matters to be stated in the certificate are true and correct;
- (e) take, test or analyse samples of goods, or from equipment or other things, that are relevant to the application;
- (f) arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of goods, or from equipment or other things, that are relevant to the application;
- (g) any other thing prescribed by the rules.

Note 1: See Division 2 of Part 6 of Chapter 11 in relation to taking, testing and analysing samples.

Note 2: An audit of export operations carried out in relation to a kind of non-prescribed goods by a person to whom a government certificate has been issued may be conducted at any time during the period of 18 months after the certificate was issued (see subsection 266(4)).

## 69 Applications in relation to certain kinds of non-prescribed goods

- (1) This section applies in relation to an application to the Secretary for a government certificate that relates to a kind of goods (the **relevant goods**) referred to in paragraph (d) of the definition of **goods** in section 12 that:
  - (a) are non-prescribed goods; and
  - (b) are not specified by rules made for the purposes of subparagraph 62(2)(a)(i) or (ii).

**Section 70**

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- (2) For the purposes of making a decision in relation to the application, the Secretary may have regard to the following matters (in addition to the matters referred to in subsection 67(3)):
- (a) sanitary matters (being matters relating to food safety, animal health or human health) and phytosanitary matters (being matters relating to plant health) relating to the relevant goods;
  - (b) any Australian laws and standards relating to the relevant goods;
  - (c) Australia's rights and obligations relating to the relevant goods under any international agreements to which Australia is a party;
  - (d) any international standards relating to the relevant goods;
  - (e) any other matter the Secretary considers relevant.
- (3) However, the Secretary need not have regard to the matters referred to in subsection (2) if:
- (a) goods of the same kind as the relevant goods have previously been exported to a country; and
  - (b) the Secretary has previously issued a government certificate in relation to goods of that kind that have been exported to that country.

**70 Government certificate for goods that are to be, or that have been, exported from certain external Territories**

If:

- (a) this Part extends to an external Territory or an area adjacent to that external Territory under subsection 8(2); and
- (b) a government certificate is issued in relation to a kind of goods that are to be, or that have been, exported from that Territory or area;

the certificate may state that the goods are from that Territory.

**71 Manner of issuing government certificate**

A government certificate in relation to a kind of goods may be issued:



- (a) electronically; or
- (b) in another form acceptable to the country to which the goods are to be, or have been, exported.

## **72 Period of effect of government certificate**

- (1) A government certificate in relation to a kind of goods takes effect:
  - (a) on the date it is issued; or
  - (b) if a later date is stated in the certificate—on that later date.
- (2) A government certificate that relates to a single consignment of goods remains in force until the earlier of the following:
  - (a) any expiry date specified in the certificate;
  - (b) the day the certificate is accepted, or rejected, by the importing country.
- (3) A government certificate that relates to 2 or more consignments of goods remains in force until the earliest of the following:
  - (a) any expiry date specified in the certificate;
  - (b) the day any consignment of the goods is rejected by the importing country;
  - (c) the day on which the last consignment of the goods is accepted by the importing country.
- (4) Despite subsections (2) and (3), a government certificate in relation to a kind of goods ceases to be in force if:
  - (a) the goods are no longer intended to be exported to the country in relation to which the certificate was issued; or
  - (b) the certificate is revoked; or
  - (c) circumstances prescribed by the rules exist.

## **Division 4—Other matters**

### **73 Secretary may require assessment of goods**

- (1) This section applies if a government certificate is in force in relation to a kind of non-prescribed goods.
- (2) The Secretary may require an assessment of the goods to be carried out under Part 2 of Chapter 9 if the Secretary reasonably believes that:
  - (a) the requirements of this Act have not been complied with, or are not likely to be complied with before the goods are imported into the importing country; or
  - (b) an importing country requirement relating to the goods will not be, or is not likely to be, met before the goods are imported into the importing country; or
  - (c) the matters stated in the government certificate in relation to the goods are no longer true and correct; or
  - (d) circumstances prescribed by the rules exist.

### **74 Additional or corrected information in relation to application for government certificate etc.**

- (1) The holder of a government certificate in relation to a kind of goods must comply with subsection (2) if:
  - (a) the holder becomes aware that information included in the application for the certificate made by the holder, or information or a document given to the issuing body in relation to such an application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The holder of the government certificate must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to assessing whether:

- (a) the requirements of this Act in relation to the export of the goods in relation to which the certificate was issued have been complied with, or will be complied with before the goods are imported into the importing country; or
- (b) the importing country requirements relating to the goods in relation to which the certificate was issued have been met, or will be met before the goods are imported into the importing country; or
- (c) the matters stated in the government certificate in relation to the goods are true and correct.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
  - (a) the person is required to give information to the issuing body under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

## **75 Revocation of government certificate**

- (1) The issuing body that issued a government certificate in relation to a kind of goods, or the Secretary, may revoke the certificate if the issuing body or the Secretary (as the case may be) reasonably believes any of the following:
  - (a) information specified in the certificate is incorrect;
  - (b) this Act has not been, is not being or will not be complied with in relation to the goods;
  - (c) an importing country requirement relating to the goods will not be, or is not likely to be, met;

**Section 76**

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- (d) the integrity of the goods cannot be ensured;
- (e) the holder of the certificate has engaged in conduct that:
  - (i) intimidated a person performing functions or exercising powers under this Act; or
  - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
- (f) the holder of the certificate:
  - (i) made a false, misleading or incomplete statement in the application for the certificate; or
  - (ii) gave false, misleading or incomplete information or documents to the issuing body or to another person performing functions or exercising powers under this Act; or
  - (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (g) the certificate has not, or is not being, kept securely as required by rules made for the purposes of section 408;
- (h) circumstances prescribed by the rules exist.

Note: A government certificate that has been issued in relation to a kind of goods is taken to have been revoked if a temporary prohibition determination applies in relation to the goods (see subsection 26(1)).

- (2) If a government certificate is revoked by the issuing body or the Secretary under subsection (1), the issuing body or the Secretary must notify the holder of the certificate, in writing, of the revocation.

**76 Return of government certificate**

- (1) The rules may require a person who is in possession of a government certificate that was issued to the person to return the certificate to the issuing body that issued the certificate:
  - (a) in the circumstances prescribed by the rules; and
  - (b) at the time, or within the period, prescribed by the rules.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) the person is required to return a government certificate to an issuing body under rules made for the purposes of subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty:        60 penalty units.

## **Chapter 3—Accredited properties**

### **Part 1—Introduction**

#### **77 Simplified outline of this Chapter**

The Secretary may, on application by the manager of a property, accredit the property for a kind of export operations in relation to a kind of prescribed goods.

A property may be accredited for more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places.

The accreditation of a property is subject to certain conditions.

The accreditation of a property may remain in force indefinitely or may cease to be in force on an expiry date.

If there is an expiry date for the accreditation of a property, the accreditation may be renewed.

The matters covered by the accreditation of a property or the conditions of the accreditation may be varied.

The accreditation of a property may be suspended wholly or in part, and may be revoked.

A show cause notice must be given to the manager of an accredited property before the accreditation may be varied, suspended or revoked (except in serious and urgent cases or if the manager has requested the variation, suspension or revocation).

The manager of an accredited property must comply with certain obligations.

## **Part 2—Application for accreditation**

### **78 Application for accreditation of property**

- (1) The manager of a property may apply to the Secretary to accredit the property for a kind of export operations in relation to a kind of prescribed goods.
- (2) An application:
  - (a) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
  - (b) may, but is not required to, specify one or more places to which the goods are to be exported.

Note 1: The export of a kind of prescribed goods may be prohibited unless export operations in relation to the goods have been carried out at an accredited property (see section 29 and rules made for the purposes of that section).

Note 2: Section 377 sets out requirements for applications.

### **79 Secretary must decide whether to accredit property**

- (1) On receiving an application under section 78 to accredit a property, the Secretary must decide:
  - (a) to accredit the property; or
  - (b) to refuse to accredit the property.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is to accredit the property for more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to accredit the property for some or all of those kinds of export operations in relation to some or all of those kinds of goods for export to some or all of those places.

Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

**Section 79**

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Note 4: A decision to refuse to accredit a property for a kind of export operations in relation to a kind of prescribed goods is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may accredit the property for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a specified place to which the goods may be exported if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following requirements are met:
- (a) either:
    - (i) all relevant Commonwealth liabilities of the manager of the property, or relating to the property, have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the manager, or relating to the property, have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;
  - (b) any other requirements prescribed by the rules.

Note: For the purposes of paragraph (a), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

- (3) Without limiting paragraph (2)(b), the rules may prescribe requirements in relation to any or all of the following:
- (a) the manager of a property;
  - (b) the kind of property;
  - (c) a kind of export operations;
  - (d) a kind of prescribed goods;
  - (e) importing country requirements relating to a kind of export operations or a kind of prescribed goods.
- (4) If the Secretary accredits the property, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the accreditation.



Section 80

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Note 1: If there is no expiry date for the accreditation of a property, the accreditation remains in force unless it is revoked (see subsection 82(1)).

Note 2: A decision to set an expiry date for the accreditation of a property is a reviewable decision (see Part 2 of Chapter 11).

- (5) The Secretary may set an expiry date for the accreditation of the property under subsection (4) even if rules made for the purposes of subsection 82(5) apply in relation to the accreditation.

**80 Conditions of accreditation**

- (1) If the Secretary accredits a property for a kind of export operations in relation to a kind of prescribed goods, the accreditation is subject to:
- (a) the conditions provided by this Act; and
  - (b) the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the accreditation); and
  - (c) any additional conditions that the Secretary considers appropriate and that are specified in the notice given to the applicant under section 81.

Note 1: The manager of an accredited property may commit an offence or be liable to a civil penalty if a condition of the accreditation is contravened (see section 106).

Note 2: The accreditation of a property may be suspended or revoked if a condition of the accreditation is contravened (see sections 94 and 102).

Note 3: A decision to accredit a property subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

Note 4: Part 7 sets out additional obligations of the manager of an accredited property.

- (2) Without limiting paragraph (1)(b), the rules may prescribe conditions in relation to any or all of the following:
- (a) the manager of a property;
  - (b) the kind of property;
  - (c) a kind of export operations;

## Section 81

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- (d) a kind of prescribed goods;
  - (e) importing country requirements relating to a kind of export operations or a kind of prescribed goods.
- (3) For the purposes of this Act, conditions to which the accreditation of a property is subject under subsection (1) or section 85 are conditions of the accreditation.

### **81 Notice of decision**

If the Secretary accredits a property, the Secretary must give the applicant a written notice stating the following information:

- (a) the accreditation number allocated to the property;
- (b) each kind of export operations and each kind of prescribed goods covered by the accreditation;
- (c) if applicable, each place to which a kind of prescribed goods covered by the accreditation may be exported;
- (d) the date the accreditation takes effect;
- (e) that the accreditation remains in force indefinitely or the expiry date for the accreditation;
- (f) any conditions prescribed by the rules that the Secretary has decided are not to be conditions of the accreditation;
- (g) any additional conditions of the accreditation;
- (h) the name of the manager of the property;
- (i) any other information prescribed by the rules.

### **82 Period of effect of accreditation**

*Accreditations that have no expiry date*

- (1) If there is no expiry date for the accreditation of a property, the accreditation remains in force unless it is revoked under Part 6 or under rules made for the purposes of subsection 109(3).

*Accreditations that have an expiry date*

- (2) If there is an expiry date for the accreditation of a property (including an accreditation that has been renewed under Part 3), the accreditation remains in force until the end of that expiry date unless:
- (a) the accreditation is renewed under Part 3 on or before that date; or
  - (b) the accreditation is revoked under Part 6 or under rules made for the purposes of subsection 109(3) on or before that date.
- (3) There is an expiry date for the accreditation of a property if:
- (a) rules made for the purposes of subsection (5) apply in relation to the accreditation; or
  - (b) an expiry date for the accreditation set under subsection 79(4) or 84(3) or paragraph 90(1)(c) or (d) is in force in relation to the accreditation.
- (4) The ***expiry date*** for the accreditation of a property is:
- (a) if rules made for the purposes of subsection (5) apply in relation to the accreditation and no expiry date set under subsection 79(4) or 84(3) or paragraph 90(1)(c) or (d) is in force in relation to the accreditation—the last day of the period prescribed by the rules; or
  - (b) if an expiry date for the accreditation set under subsection 79(4) or 84(3) or paragraph 90(1)(c) or (d) is in force in relation to the accreditation—that date.

*Rules may prescribe period of effect of accreditation*

- (5) The rules may prescribe the period during which the accreditation of a property remains in force. The rules may apply in relation to:
- (a) accreditations of properties generally; or
  - (b) accreditations of properties for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

## **Part 3—Renewal of accreditation**

### **83 Application to renew accreditation of property**

- (1) This section applies in relation to an accredited property (including a property in relation to which a suspension is in effect under Part 5) if there is an expiry date for the accreditation.

Note: See subsections 82(3) and (4) in relation to the expiry date for the accreditation of a property.

- (2) The manager of the property may apply to the Secretary to renew the accreditation of the property.

Note: Section 377 sets out requirements for applications.

- (3) An application for renewal:

- (a) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
- (b) may, but is not required to, specify one or more places to which the goods are to be exported.

- (4) An application for renewal must be made:

- (a) within the period prescribed by the rules; or
- (b) if the Secretary allows a longer period—within that longer period.

- (5) If an application to renew the accreditation of a property is made after the period applying under subsection (4):

- (a) the application is taken to be an application to accredit the property; and
- (b) Part 2 applies in relation to the application; and
- (c) the other provisions of this Part do not apply in relation to the application.

## **84 Secretary must decide whether to renew accreditation**

- (1) On receiving an application under section 83 to renew the accreditation of a property, the Secretary must decide:
- (a) to renew the accreditation; or
  - (b) to refuse to renew the accreditation.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is to renew the accreditation of the property for more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to renew the accreditation for some or all of those kinds of export operations in relation to some or all of those kinds of goods for export to some or all of those places.

Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 4: A decision to refuse to renew the accreditation of the property for a kind of export operations in relation to a kind of prescribed goods is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may refuse to renew the accreditation of the property for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a specified place to which the goods may be exported if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:
- (a) the requirements prescribed by rules made for the purposes of paragraph 79(2)(b) are continuing to be met;
  - (b) either:
    - (i) all relevant Commonwealth liabilities of the manager of the property, or relating to the property, have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the manager, or relating to the property, have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;

Section 85

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- (c) the manager of the property has complied with the requirements of this Act;
- (d) the conditions of the accreditation have been, and are being, complied with;
- (e) any other requirement prescribed by the rules is being, or has been, met.

Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

- (3) If the Secretary renews the accreditation of the property, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the accreditation.

Note 1: If there is no expiry date for the accreditation of a property, the accreditation remains in force unless it is revoked (see subsection 82(1)).

Note 2: A decision to set an expiry date for the renewed accreditation of a property is a reviewable decision (see Part 2 of Chapter 11).

- (4) The Secretary may set an expiry date for the accreditation of the property under subsection (3) even if rules made for the purposes of subsection 82(5) apply in relation the accreditation.

**85 Conditions of renewed accreditation**

If the Secretary renews the accreditation of a property, the accreditation is subject to:

- (a) the conditions provided by this Act; and
- (b) the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the accreditation); and
- (c) any additional conditions that the Secretary considers appropriate and that are specified in the notice given to the applicant under section 86.

Note 1: The manager of an accredited property may commit an offence or be liable to a civil penalty if a condition of the accreditation is contravened (see section 106).

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Section 86

- Note 2: The accreditation of a property may be suspended or revoked if a condition of the accreditation is contravened (see sections 94 and 102).
- Note 3: A decision to renew the accreditation of a property subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).
- Note 4: Part 7 sets out additional obligations of the manager of an accredited property.

### **86 Notice of decision**

If the accreditation of a property is renewed, the Secretary must give the applicant a written notice stating the information referred to in section 81.

## **Part 4—Variation of accreditation**

### **Division 1—Application by manager**

#### **87 Application by manager for variation of accreditation or approval of alteration of property**

- (1) The manager of an accredited property may apply to the Secretary:
- (a) to vary the accreditation in relation to any of the following matters (including by adding or removing any of those matters):
    - (i) kinds of export operations;
    - (ii) kinds of prescribed goods;
    - (iii) if applicable, places to which goods may be exported;
  - (b) to approve a variation of the accreditation so that it covers:
    - (i) an alteration of the property, being an alteration of a kind prescribed by the rules; or
    - (ii) the carrying out of export operations on an additional part of the property, or on another property, in the circumstances prescribed by the rules; or
  - (c) to vary the conditions of the accreditation; or
  - (d) to vary the particulars relating to the accreditation to make a minor change to a matter (including to correct a minor or technical error); or
  - (e) to vary any other aspect of the accreditation.

**Example:** For the purposes of paragraph (e), a variation may be needed to change the name of a person who manages or controls, or will manage or control, export operations covered by the accreditation.

**Note:** Section 377 sets out requirements for applications. A single application may be made to make or approve a variation in relation to the accreditation of a property and to renew the accreditation of the property.

- (2) If the Secretary receives an application under subsection (1) to make a variation or give an approval, the Secretary must decide:



- (a) to make the variation or give the approval; or
- (b) to refuse to make the variation or give the approval.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 3: A decision to refuse the application is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (3) The Secretary may make the variation, or give the approval, if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that, if the variation were made or the approval were given:
  - (a) the requirements prescribed by rules made for the purposes of paragraph 79(2)(b) would continue to be met; and
  - (b) any other requirement prescribed by the rules would be met.

### **88 Notice of variation or approval of alteration**

- (1) If the Secretary makes a variation or gives an approval in relation to the accreditation of a property under paragraph 87(2)(a), the Secretary must give the manager of the property written notice of the variation or approval.
- (2) The notice must state the following:
  - (a) details of the variation or approval;
  - (b) if the variation is of the conditions of the accreditation—the varied conditions;
  - (c) the date the variation or approval takes effect;
  - (d) any other information prescribed by the rules.

Note: The accreditation, as varied, remains in force as provided by section 82.

Section 89

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**89 Certain variations must not be made unless approved**

*Prescribed alteration of property*

- (1) The manager of an accredited property must not make an alteration of the property that is of a kind prescribed by rules made for the purposes of subparagraph 87(1)(b)(i) unless:
- (a) the alteration has been approved under subsection 87(2); and
  - (b) the Secretary has given the manager notice of the approval under section 88.

Note: The Secretary may suspend or revoke the accreditation of the property if the manager contravenes this subsection (see paragraphs 94(1)(g) and 102(1)(g)).

*Carrying out export operations on additional part of property*

- (2) The manager of an accredited property must not carry out export operations in relation to a kind of prescribed goods on an additional part of the property, or on another property, in the circumstances prescribed by rules made for the purposes of subparagraph 87(1)(b)(ii) unless:
- (a) the carrying out of those export operations on the additional part of the property, or on the other property, has been approved under subsection 87(2); and
  - (b) the Secretary has given the manager notice of the approval under section 88.

Note: The Secretary may suspend or revoke the accreditation of the property if the manager contravenes this subsection (see paragraphs 94(1)(g) and 102(1)(g)).

## **Division 2—Variation by Secretary**

### **90 Secretary may make variations in relation to accreditation**

- (1) The Secretary may do any of the following in relation to the accreditation of a property:
- (a) vary any aspect of the accreditation, including so that it does not cover:
    - (i) a kind of export operations; or
    - (ii) a kind of prescribed goods; or
    - (iii) if applicable, a place to which goods may be exported;
  - (b) vary the conditions of the accreditation (including by imposing new conditions);
  - (c) if there is no expiry date for the accreditation—vary the accreditation by setting an expiry date for the accreditation;
  - (d) if there is an expiry date for the accreditation (whether under paragraph 82(4)(a) or (b))—vary the accreditation by setting a different expiry date for the accreditation;
  - (e) if there is an expiry date for the accreditation under paragraph 82(4)(b)—vary the accreditation by revoking that expiry date.

Note 1: If the Secretary revokes the expiry date for the accreditation under paragraph (e), the accreditation will remain in force:

- (a) if rules made for the purposes of subsection 82(5) apply in relation to the accreditation—for the period prescribed by the rules; or
- (b) if there are no such rules—indefinitely (unless it is revoked).

Note 2: Certain decisions under subsection (1) are reviewable decisions (see Part 2 of Chapter 11).

- (2) The Secretary may make a variation in relation to the accreditation of a property under paragraph (1)(a), (b) or (c), or set an earlier expiry date for the accreditation under paragraph (1)(d), only if the Secretary reasonably believes that:
- (a) the requirements prescribed by rules made for the purposes of paragraph 79(2)(b) are no longer being met; or

Section 91

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- (b) a condition of the accreditation has been, or is being, contravened; or
- (c) it is necessary to do so:
  - (i) to take account of an event notified under section 108; or
  - (ii) to correct a minor or technical error; or
- (d) the accreditation needs to be varied for any other reason prescribed by the rules.

*Notice of certain proposed variations*

- (3) The Secretary must not make a variation in relation to the accreditation of a property under paragraph (1)(a), (b) or (c), or set an earlier expiry date for the accreditation under paragraph (1)(d), unless the Secretary has given a written notice to the manager of the property in accordance with subsection (4).
- (4) A notice under subsection (3) must:
  - (a) specify each proposed variation; and
  - (b) specify the grounds for each proposed variation; and
  - (c) subject to subsection (5), request the manager of the property to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
  - (d) include a statement setting out the manager's right to seek review of a decision to make the proposed variation.
- (5) A notice under subsection (3) is not required to include the request referred to in paragraph (4)(c) if the Secretary reasonably believes that the grounds for the proposed variation are serious and urgent.

**91 Notice of variation**

- (1) If the Secretary makes a variation in relation to the accreditation of a property under subsection 90(1), the Secretary must give the manager of the property written notice of the variation.
  - (2) The notice must state the following:
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- (a) details of the variation;
  - (b) if the variation is of the conditions of the accreditation—the varied conditions and any new conditions;
  - (c) if the variation affects the period of effect of the accreditation:
    - (i) the expiry date for the accreditation under paragraph 82(4)(a) or (b) (whichever applies); or
    - (ii) if there is no expiry date for the accreditation—that the accreditation remains in force unless it is revoked;
  - (d) the date the variation takes effect;
  - (e) any other information prescribed by the rules.
- (3) If the manager was given a notice (a *show cause notice*) under subsection 90(3) that included the request referred to in paragraph 90(4)(c), the variation must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

Note: The accreditation, as varied, remains in force as provided by section 82.

## **Part 5—Suspension of accreditation**

### **Division 1—Suspension requested by manager**

#### **92 Manager may request suspension**

- (1) Subject to subsection (2), the manager of an accredited property may request the Secretary to suspend the accreditation of the property in relation to a kind of export operations and a kind of prescribed goods and, if applicable, a place to which goods may be exported.
- (2) A request may be made under subsection (1) only in the circumstances prescribed by the rules.
- (3) A request under subsection (1) may relate to more than one kind of export operations or more than one kind of prescribed goods and, if applicable, more than one place.
- (4) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) state each kind of export operations and each kind of prescribed goods and, if applicable, each place in relation to which the accreditation is to be suspended; and
  - (c) specify the reason for the suspension; and
  - (d) include any other information prescribed by the rules.
- (5) If the Secretary receives a request from the manager of an accredited property under subsection (1), the Secretary must, by written notice to the manager, suspend the accreditation as requested, with effect on the day specified in the notice.

#### **93 Request to revoke suspension**

- (1) If the accreditation of a property is suspended under section 92, the manager of the property may request the Secretary to revoke the suspension.

- (2) A request under subsection (1) must:
- (a) be in writing; and
  - (b) state the reason for the request; and
  - (c) include any other information prescribed by the rules.
- (3) If the Secretary receives a request from the manager of an accredited property under subsection (1), the Secretary may:
- (a) if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked—revoke the suspension by written notice to the manager; or
  - (b) in any other case:
    - (i) suspend the accreditation of the property under Division 2 of this Part; or
    - (ii) revoke the accreditation of the property under Division 2 of Part 6.

Note: A decision to suspend or revoke the accreditation of the property is a reviewable decision (see Part 2 of Chapter 11).

## **Division 2—Suspension by Secretary**

### **94 Grounds for suspension—general**

- (1) The Secretary may suspend the accreditation of a property in relation to one or more kinds of export operations and one or more kinds of prescribed goods and, if applicable, one or more places to which goods may be exported if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the accreditation cannot be ensured;
  - (b) a requirement prescribed by rules made for the purposes of paragraph 79(2)(b) is no longer met;
  - (c) a condition of the accreditation has been, or is being, contravened;
  - (d) the manager of the property:
    - (i) failed to comply with a direction given to the manager by an authorised officer or the Secretary; or
    - (ii) failed to comply with a request by an authorised officer to provide information or a document; or
    - (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
    - (iv) failed to comply with a request made by an auditor under section 272;
  - (e) the manager of the property has engaged in conduct that:
    - (i) intimidated a person performing functions or exercising powers under this Act; or
    - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
  - (f) the manager of the property or any other person who manages or controls export operations carried out at the property:
    - (i) made a false, misleading or incomplete statement in an application under this Chapter; or



- (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
- (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (g) the manager of the property has contravened a requirement of this Act in relation to the accreditation of the property;
- (h) a ground prescribed by the rules exists.

Note 1: A suspension must not be for more than 12 months (see section 97).

Note 2: A decision to suspend the accreditation of a property under this section is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed suspension*

- (2) The Secretary must not suspend the accreditation of a property under subsection (1) unless the Secretary has given a written notice to the manager of the property in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify each kind of export operations and each kind of prescribed goods and, if applicable, each place in relation to which the accreditation is proposed to be suspended; and
  - (b) specify the grounds for the proposed suspension; and
  - (c) subject to subsection (4), request the manager of the accredited property to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the accreditation should not be suspended as proposed; and
  - (d) include a statement setting out the manager's right to seek review of a decision to suspend the accreditation as proposed.
- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(c) if the Secretary reasonably believes that the grounds for the suspension are serious and urgent.

Section 95

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**95 Grounds for suspension—overdue relevant Commonwealth liability**

*Notice of proposed suspension*

- (1) The Secretary may suspend the accreditation of a property in relation to all kinds of export operations and all kinds of prescribed goods if:
- (a) a relevant Commonwealth liability of the manager of the property, or relating to the property, is more than 30 days overdue; and
  - (b) the Secretary has given a written notice to the person (the **debtor**) who is liable to pay the relevant Commonwealth liability in accordance with subsection (2); and
  - (c) within 8 days after the notice is given:
    - (i) the relevant Commonwealth liability has not been paid; or
    - (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.
- Note 1: A suspension must not be for more than 12 months (see section 97).
- Note 2: A decision to suspend the accreditation of a property under this section is a reviewable decision (see Part 2 of Chapter 11).
- Note 3: If the Secretary suspends the accreditation of a property under this section, the Secretary may revoke the accreditation of the property in certain circumstances (see section 103).
- (2) A notice under subsection (1) must:
- (a) state that a relevant Commonwealth liability of the debtor in relation to an accredited property is more than 30 days overdue; and
  - (b) state that the Secretary may suspend the accreditation of the property for all kinds of export operations in relation to all kinds of prescribed goods if, within 8 days after the notice is given:
    - (i) the relevant Commonwealth liability is not paid; or

- (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability;  
and
- (c) include a statement setting out the debtor's right to seek review of a decision to suspend the accreditation of the property.

*Secretary may direct that activities not be carried out*

- (3) If the Secretary suspends the accreditation of a property under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (4) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

## **96 Notice of suspension**

- (1) If the Secretary decides to suspend the accreditation of a property under this Division, the Secretary must give the manager of the property a written notice stating the following:
  - (a) that the accreditation of the property is to be suspended, for the period specified in the notice, in relation to all or specified kinds of export operations and all or specified kinds of prescribed goods and, if applicable, all or specified places to which goods may be exported;
  - (b) the reasons for the suspension;
  - (c) the date the suspension is to start;
  - (d) the period of the suspension.
- (2) If the manager was given a notice (a *show cause notice*) under subsection 94(2) that included the request referred to in

Section 97

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paragraph 94(3)(c), the suspension must not start before the earlier of the following:

- (a) the day after any response to the request is received by the Secretary;
- (b) the end of 14 days after the show cause notice was given.

**97 Period of suspension**

- (1) A suspension of the accreditation of a property under this Division must not be for more than 12 months.
- (2) The Secretary may vary the period of a suspension under this Division by written notice to the manager of the property. However, the total period of the suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension is a reviewable decision (see Part 2 of Chapter 11).

**98 Revocation of suspension**

The Secretary may revoke a suspension of the accreditation of a property under this Division by written notice to the manager of the property.

## **Division 3—Other provisions**

### **99 Effect of suspension**

- (1) If the accreditation of a property is suspended wholly or in part under Division 1 or 2 or under rules made for the purposes of subsection 109(3):
  - (a) the accreditation of the property remains in force while it is suspended; and
  - (b) subject to rules made for the purposes of subsection (2), the requirements of this Act in relation to the accreditation (including the conditions of the accreditation) must be complied with while the accreditation is suspended.
- (2) The rules may prescribe requirements of this Act (including conditions of the accreditation of a property) that are not required to be complied with during any period when the accreditation is suspended.

### **100 Export operations must not be carried out while accreditation suspended**

- (1) The manager of an accredited property contravenes this subsection if:
  - (a) the manager was given a notice of suspension in relation to the accreditation of the property under subsection 92(5) or 96(1); and
  - (b) export operations in relation to which the accreditation was suspended were carried out at the property while the accreditation was suspended.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) The manager of an accredited property commits an offence if the manager contravenes subsection (1).

Section 100

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Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) The manager of an accredited property is liable to a civil penalty if the manager contravenes subsection (1).

Civil penalty: 240 penalty units.

## **Part 6—Revocation of accreditation**

### **Division 1—Revocation requested by manager**

#### **101 Manager may request revocation**

- (1) The manager of an accredited property (including a property in relation to which a suspension is in effect under Part 5) may request the Secretary to revoke the accreditation of the property.

Note: If the manager does not wish to revoke the accreditation of the property in relation to all kinds of export operations and all kinds of prescribed goods, the manager may apply to vary the accreditation under Division 1 of Part 4.

- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) include the information (if any) prescribed by the rules.
- (3) If the Secretary receives a request from the manager of an accredited property under subsection (1), the Secretary must, by written notice to the manager, revoke the accreditation of the property, with effect on the day specified in the notice.
- (4) Subsection (3) does not apply if, before the request under subsection (1) was made, the Secretary:
  - (a) had given the manager of the property a notice under subsection 102(2) in relation to the accreditation; and
  - (b) had not decided whether to revoke the accreditation or not.

## **Division 2—Revocation by Secretary**

### **102 Grounds for revocation—general**

- (1) The Secretary may revoke the accreditation of a property (including a property in relation to which a suspension is in effect under Part 5) if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the accreditation cannot be ensured;
  - (b) a requirement prescribed by rules made for the purposes of paragraph 79(2)(b) is no longer met;
  - (c) a condition of the accreditation has been, or is being, contravened;
  - (d) the manager of the property:
    - (i) failed to comply with a direction given to the manager by an authorised officer or the Secretary; or
    - (ii) failed to comply with a request by an authorised officer to provide information or a document; or
    - (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
    - (iv) failed to comply with a request made by an auditor under section 272;
  - (e) the manager of the property has engaged in conduct that:
    - (i) intimidated a person performing functions or exercising powers under this Act; or
    - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
  - (f) the manager of the property or any other person who manages or controls export operations carried out at the property:
    - (i) made a false, misleading or incomplete statement in an application under this Chapter; or
    - (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person



performing functions or exercising powers under this Act; or

- (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (g) the manager of the property has contravened a requirement of this Act in relation to the accreditation of the property;
- (h) a ground prescribed by the rules exists.

Note: A decision to revoke the accreditation of a property is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed revocation*

- (2) The Secretary must not revoke the accreditation of a property under subsection (1) unless the Secretary has given a written notice to the manager of the property in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify the grounds for the proposed revocation; and
  - (b) subject to subsection (4), request the manager of the accredited property to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the accreditation should not be revoked; and
  - (c) include a statement setting out the manager's right to seek review of a decision to revoke the accreditation.
- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(b) if the Secretary reasonably believes that the grounds for the revocation are serious and urgent.

**103 Grounds for revocation—overdue relevant Commonwealth liability**

- (1) The Secretary may revoke the accreditation of a property if:
  - (a) the accreditation is suspended under subsection 95(1) for non-payment of a relevant Commonwealth liability; and
  - (b) within 90 days after the start of the suspension:

Section 104

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- (i) the relevant Commonwealth liability had not been paid;  
or
- (ii) the person (the *debtor*) who is liable to pay the relevant Commonwealth liability had not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Note: A decision to revoke the accreditation of a property under this section is a reviewable decision (see Part 2 of Chapter 11).

*Secretary may direct that activities not be carried out*

- (2) If the Secretary revokes the accreditation of a property under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (3) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

**104 Notice of revocation**

- (1) If the Secretary decides to revoke the accreditation of a property under this Division, the Secretary must give the manager of the property a written notice stating the following:
  - (a) that the accreditation of the property is to be revoked;
  - (b) the reasons for the revocation;
  - (c) the date the revocation is to take effect.

Note: The notice must also state the matters referred to in section 382.

- (2) If the manager was given a notice (a *show cause notice*) under subsection 102(2) that included the request referred to in paragraph 102(3)(b), the revocation must not take effect before the earlier of the following:

Section 104

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- (a) the day after any response to the request is received by the Secretary;
- (b) the end of 14 days after the show cause notice was given.

## Division 3—Other provisions

### 105 Secretary may require action to be taken after accreditation revoked

- (1) This section applies if:
  - (a) a person was given notice of revocation of the accreditation of a property under subsection 101(3) or 104(1); or
  - (b) the accreditation of the property was revoked under Division 1 or 2.
- (2) The Secretary may, in writing, direct the person to take specified action, within a specified period after the accreditation is revoked, in relation to the export operations and goods that were covered by the accreditation. The action must be action that is necessary for the purpose of achieving one or more objects of this Act.
- (3) A direction to a person under subsection (2) must state that, if the person fails to comply with the direction, the person could commit an offence or be liable to a civil penalty.

Note: See also section 309 (general provisions relating to directions).

- (4) A person who is given a direction under subsection (2) must comply with the direction.

#### *Fault-based offence*

- (5) A person commits an offence if:
  - (a) the person is given a direction under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

#### *Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

## Part 7—Obligations of managers of accredited properties etc.

### 106 Conditions of accreditation must not be contravened

*Accreditation that is not suspended*

- (1) A person contravenes this subsection if:
- (a) the person is the manager of an accredited property; and
  - (b) the accreditation of the property is not suspended wholly or in part under Part 5; and
  - (c) the accreditation covers a kind of prescribed goods (the **relevant goods**) that may be exported:
    - (i) generally; or
    - (ii) to one or more places; and
  - (d) the relevant goods are:
    - (i) in the case of an accreditation referred to in subparagraph (c)(i)—exported to any place; or
    - (ii) in the case of an accreditation referred to in subparagraph (c)(ii)—exported to a place covered by the accreditation; and
  - (e) a condition of the accreditation relating to the relevant goods, or to export operations carried out in relation to the relevant goods, is contravened.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

*Accreditation that is suspended*

- (4) A person contravenes this subsection if:
- (a) the person is the manager of an accredited property; and
  - (b) the accreditation of the property is suspended wholly or in part under Part 5; and
  - (c) the accreditation covers a kind of prescribed goods (the **relevant goods**) that may be exported:
    - (i) generally; or
    - (ii) to one or more places; and
  - (d) the relevant goods are:
    - (i) in the case of an accreditation referred to in subparagraph (c)(i)—exported to any place; or
    - (ii) in the case of an accreditation referred to in subparagraph (c)(ii)—exported to a place covered by the accreditation; and
  - (e) a condition of the accreditation relating to the relevant goods, or to export operations carried out in relation to the relevant goods, is contravened; and
  - (f) the condition is required to be complied with during the period of the suspension.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 370).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Section 107

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*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

**107 Additional or corrected information in relation to application for accreditation etc.**

- (1) The manager of an accredited property must comply with subsection (2) if:
- (a) the manager becomes aware that information included in an application made by the manager under this Chapter, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The manager of the property must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing whether:
- (a) the requirements of this Act in relation to a matter covered by the accreditation of the property have been, are being, or will be complied with; or
  - (b) importing country requirements relating to a matter covered by the accreditation of the property have been, are being, or will be met.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: The Secretary may suspend or revoke the accreditation of the property if the manager fails to comply with this subsection (see paragraphs 94(1)(g) and 102(1)(g)).

Note 3: This section is not subject to the privilege against self-incrimination (see section 426).



*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to give information to the Secretary under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**108 Notice of event or change in circumstances**

- (1) The manager of an accredited property must notify the Secretary, in writing, as soon as practicable after an event or circumstance prescribed by the rules occurs.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary of an event or circumstance in accordance with subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**109 Notice of person ceasing to be manager of accredited property**

*Notice by former manager*

- (1) If the manager (the **former manager**) of an accredited property ceases to be the manager of the property, the former manager (or another person who is legally authorised to act on behalf of the former manager) must, as soon as practicable after the cessation, notify the Secretary, in writing, of that fact. The notice must also include contact details for the person giving the notice.

Note: If the manager of an accredited property ceases to be the manager of the property, the accreditation of the property may be taken to have been suspended under rules made for the purposes of subsection (3).

Section 109

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*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary under subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty:           60 penalty units.

*Rules may make provision in relation to accredited property that no longer has a manager or in relation to which manager has changed*

- (3) The rules may make provision for and in relation to the accreditation of a property that no longer has a manager or in relation to which there has been a change of manager.
- (4) Without limiting subsection (3), the rules may do any of the following:
- (a) provide that the accreditation of a property referred to in subsection (3) is suspended or revoked;
  - (b) prescribe requirements that must be complied with by any new manager of the property;
  - (c) make provision in relation to any other matters relating to the accreditation or any new manager.

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## Chapter 4—Registered establishments

### Part 1—Introduction

#### 110 Simplified outline of this Chapter

The Secretary may, on application by the occupier of an establishment, register the establishment for a kind of export operations in relation to a kind of prescribed goods.

An establishment may be registered for more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places.

The registration of an establishment is subject to certain conditions.

The registration of an establishment may remain in force indefinitely or may cease to be in force on an expiry date.

If there is an expiry date for the registration of an establishment, the registration may be renewed.

The matters covered by the registration of an establishment or the conditions of the registration may be varied.

The registration of an establishment may be suspended wholly or in part, and may be revoked.

A show cause notice must be given to the occupier of a registered establishment before the registration may be varied, suspended or revoked (except in serious and urgent cases or if the occupier has requested the variation, suspension or revocation).

The Secretary may direct the occupier of a registered establishment to cease carrying out a kind of export operations in relation to a kind of prescribed goods in certain circumstances.

Section 110

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The occupier of a registered establishment must comply with certain obligations.

The Secretary must keep a register of information about registered establishments.

## **Part 2—Application for registration**

### **111 Application for registration of establishment**

- (1) The occupier of an establishment (other than a registered establishment) may apply to the Secretary to register the establishment for a kind of export operations in relation to a kind of prescribed goods.
- (2) An application:
  - (a) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
  - (b) may, but is not required to, specify one or more places to which the goods are to be exported.

Note 1: The export of a kind of prescribed goods may be prohibited unless export operations in relation to the goods have been carried out at a registered establishment (see section 29 and rules made for the purposes of that section).

Note 2: Section 377 sets out requirements for applications.

### **112 Secretary must decide whether to register establishment**

- (1) On receiving an application under section 111 to register an establishment, the Secretary must decide:
  - (a) to register the establishment; or
  - (b) to refuse to register the establishment.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is to register the establishment for more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to register the establishment for some or all of those kinds of export operations in relation to some or all of those kinds of goods for export to some or all of those places.

Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is

Section 112

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taken to have refused the application at the end of that period (see subsection 379(2)).

Note 4: A decision to refuse to register an establishment for a kind of export operations in relation to a kind of prescribed goods is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may register the establishment for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a specified place to which the goods may be exported if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following requirements are met:
- (a) the occupier of the establishment is a fit and proper person (having regard to the matters referred to in section 372);
  - (b) either:
    - (i) 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; or
    - (ii) if one or more relevant Commonwealth liabilities of the occupier, or relating to the establishment, have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;
  - (c) the construction of the establishment and its equipment and facilities are suitable for carrying out export operations of that kind in relation to goods of that kind (having regard to the matters prescribed by the rules);
  - (d) if the rules require export operations of that kind to be carried out in relation to goods of that kind in accordance with an approved arrangement—an approved arrangement covering that kind of export operations and that kind of goods is in force;
  - (e) if export operations, or other operations, are to be carried out in relation to different kinds of goods at the establishment—the operations:
    - (i) are compatible with each other; and

(ii) will not have a detrimental effect on export operations to be carried out in relation to a kind of prescribed goods at the establishment;

(f) any other requirement prescribed by the rules.

Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

(3) If the Secretary registers the establishment, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the registration.

Note 1: If there is no expiry date for the registration of an establishment, the registration remains in force unless it is revoked (see subsection 115(1)).

Note 2: A decision to set an expiry date for the registration of an establishment is a reviewable decision (see Part 2 of Chapter 11).

(4) The Secretary may set an expiry date for the registration of an establishment under subsection (3) even if rules made for the purposes of subsection 115(5) apply in relation to the registration.

### **113 Conditions of registration**

(1) The registration of an establishment is subject to:

- (a) the conditions provided by this Act; and
- (b) the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the registration); and
- (c) any additional conditions that the Secretary considers appropriate and that are specified in the notice given to the applicant with the certificate of registration.

Note 1: The occupier of a registered establishment may commit an offence or be liable to a civil penalty if a condition of the registration is contravened (see section 144).

Note 2: The registration of an establishment may be suspended or revoked if a condition of the registration is contravened (see sections 127 and 138).

Note 3: A decision to register an establishment subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

Section 114

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Note 4: Part 7 sets out additional obligations of the occupier of a registered establishment.

- (2) Without limiting paragraph (1)(b), the rules may prescribe conditions in relation to any or all of the following:
- (a) the occupier of an establishment;
  - (b) the kind of establishment;
  - (c) a kind of export operations;
  - (d) a kind of prescribed goods;
  - (e) importing country requirements relating to a kind of export operations or a kind of prescribed goods.
- (3) For the purposes of this Act, conditions to which the registration of an establishment is subject under subsection (1) or section 118 are conditions of the registration.

**114 Notice of decision and certificate of registration**

If the Secretary registers an establishment, the Secretary must give the applicant:

- (a) a certificate of registration stating the following information:
  - (i) the registration number allocated to the establishment;
  - (ii) each kind of export operations and each kind of prescribed goods covered by the registration;
  - (iii) if applicable, each place where a kind of prescribed goods covered by the registration may be exported;
  - (iv) the date the registration takes effect;
  - (v) that the registration remains in force indefinitely or the expiry date for the registration;
  - (vi) any other information prescribed by the rules; and
- (b) a written notice stating the following:
  - (i) any conditions prescribed by the rules that the Secretary has decided are not to be conditions of the registration;
  - (ii) any additional conditions of the registration;
  - (iii) any other information prescribed by the rules.



## 115 Period of effect of registration

### *Registrations that have no expiry date*

- (1) If there is no expiry date for the registration of an establishment, the registration remains in force unless:
  - (a) it is revoked under Part 6; or
  - (b) it is taken to have been revoked under section 147.

### *Registrations that have an expiry date*

- (2) If there is an expiry date for the registration of an establishment (including registration that has been renewed under Part 3), the registration remains in force until the end of that expiry date unless:
  - (a) the registration is renewed under Part 3 on or before that date; or
  - (b) the registration is revoked under Part 6, or is taken to have been revoked under section 147, on or before that date.
- (3) There is an expiry date for the registration of an establishment if:
  - (a) rules made for the purposes of subsection (5) apply in relation to the registration; or
  - (b) an expiry date for the registration set under subsection 112(3) or 117(3) or paragraph 123(1)(c) or (d) is in force in relation to the registration.
- (4) The **expiry date** for the registration of an establishment is:
  - (a) if rules made for the purposes of subsection (5) apply in relation to the registration and no expiry date set under subsection 112(3) or 117(3) or paragraph 123(1)(c) or (d) is in force in relation to the registration—the last day of the period prescribed by the rules; or
  - (b) if an expiry date for the registration set under subsection 112(3) or 117(3) or paragraph 123(1)(c) or (d) is in force in relation to the registration—that date.

Section 115

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*Rules may prescribe period of effect of registration*

- (5) The rules may prescribe the period during which the registration of an establishment remains in force. The rules may apply in relation to:
- (a) registration of establishments generally; or
  - (b) registrations of establishments for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

## **Part 3—Renewal of registration**

### **116 Application to renew registration of establishment**

- (1) This section applies in relation to a registered establishment (including an establishment in relation to which a suspension is in effect under Part 5) if there is an expiry date for the registration.

Note: See subsections 115(3) and (4) in relation to the expiry date for the registration of an establishment.

- (2) The occupier of the establishment may apply to the Secretary to renew the registration of the establishment.

Note: Section 377 sets out requirements for applications.

- (3) An application for renewal:

- (a) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
- (b) may, but is not required to, specify one or more places to which the goods are to be exported.

- (4) An application for renewal must be made:

- (a) within the period prescribed by the rules; or
- (b) if the Secretary allows a longer period—within that longer period.

- (5) If an application to renew the registration of an establishment is made after the period applying under subsection (4):

- (a) the application is taken to be an application to register the establishment; and
- (b) Part 2 applies in relation to the application; and
- (c) the other provisions of this Part do not apply in relation to the application.

Section 117

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**117 Secretary must decide whether to renew registration**

- (1) On receiving an application under section 116 to renew the registration of an establishment, the Secretary must decide:
- (a) to renew the registration; or
  - (b) to refuse to renew the registration.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is to renew the registration of the establishment for more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to renew the registration for some or all of those kinds of export operations in relation to some or all of those kinds of goods for export to some or all of those places.

Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 4: A decision to refuse to renew the registration of an establishment for a kind of export operations in relation to a kind of prescribed goods is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may refuse to renew the registration of the establishment for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a specified place to which the goods may be exported if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:
- (a) the occupier of the establishment is a fit and proper person (having regard to the matters referred to in section 372);
  - (b) either:
    - (i) 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; or
    - (ii) if one or more relevant Commonwealth liabilities of the occupier, or relating to the establishment, have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;

- (c) the occupier of the establishment has complied with the requirements of this Act in relation to the export operations and prescribed goods covered by the registration (whether at the establishment or not);
- (d) the conditions of the registration have been, and are being, complied with;
- (e) the construction of the establishment and its equipment and facilities are suitable for carrying out export operations of that kind in relation to goods of that kind (having regard to the matters prescribed by the rules);
- (f) if the rules require export operations of that kind to be carried in relation to goods of that kind in accordance with an approved arrangement—an approved arrangement covering that kind of export operations and that kind of goods is in force;
- (g) any other requirement prescribed by the rules is met.

Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

- (3) If the Secretary renews the registration of the establishment, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the registration.

Note 1: If there is no expiry date for the registration of an establishment, the registration remains in force unless it is revoked (see subsection 115(1)).

Note 2: A decision to set an expiry date for the renewed registration of an establishment is a reviewable decision (see Part 2 of Chapter 11).

- (4) The Secretary may set an expiry date for the registration of an establishment under subsection (3) even if rules made for the purposes of subsection 115(5) apply in relation the registration.

## 118 Conditions of renewed registration

If the Secretary renews the registration of an establishment, the registration is subject to:

- (a) the conditions provided by this Act; and

**Section 119**

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- (b) the conditions prescribed by rules made for the purposes of paragraph 113(1)(b) (other than any of those conditions that the Secretary decides are not to be conditions of the registration); and
- (c) any additional conditions that the Secretary considers appropriate and that are specified in the notice given under section 119.

- Note 1: The occupier of a registered establishment may commit an offence or be liable to a civil penalty if a condition of the registration is contravened (see section 144).
- Note 2: The registration of an establishment may be suspended or revoked if a condition of the registration is contravened (see sections 127 and 138).
- Note 3: A decision to renew the registration of an establishment subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).
- Note 4: Part 7 sets out additional obligations of the occupier of a registered establishment.

**119 Notice of decision and certificate of registration**

If the registration of an establishment is renewed, the Secretary must give the applicant:

- (a) a certificate of registration stating the information referred to in paragraph 114(a); and
- (b) a written notice stating the information referred to in paragraph 114(b).

## **Part 4—Variation of registration**

### **Division 1—Application by occupier**

#### **120 Application by occupier for variation of registration or approval of alteration of establishment**

- (1) The occupier of a registered establishment may apply to the Secretary:
- (a) to vary the registration in relation to any of the following matters (including by adding or removing any of those matters):
    - (i) kinds of export operations;
    - (ii) kinds of prescribed goods;
    - (iii) if applicable, places to which goods may be exported; or
  - (b) to approve an alteration of the establishment (including an addition to the establishment); or
  - (c) to vary the conditions of the registration; or
  - (d) to vary the particulars relating to the registration to make a minor change to a matter (including to correct a minor or technical error); or
  - (e) to vary any other aspect of the registration.

**Example:** For the purposes of paragraph (e), a variation may be needed to change the name of a person who manages or controls, or will manage or control, export operations covered by the registration.

**Note:** Section 377 sets out requirements for applications. A single application may be made to make or approve a variation in relation to the registration of an establishment and to renew the registration of the establishment.

- (2) If the Secretary receives an application under subsection (1) to make a variation or approve an alteration, the Secretary must decide:
- (a) to make the variation or approve the alteration; or
  - (b) to refuse to make the variation or approve the alteration.

**Chapter 4** Registered establishments

**Part 4** Variation of registration

**Division 1** Application by occupier

**Section 121**

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Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 3: A decision to refuse the application is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (3) The Secretary may make the variation or approve the alteration if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that, if the variation were made or the alteration were approved:
- (a) the requirements referred to in subsection 112(2) would continue to be met; and
  - (b) any other requirement prescribed by the rules would be met.

Note: The occupier of a registered establishment may commit an offence or be liable to a civil penalty if:

- (a) the establishment is altered (including by way of addition to the establishment); and
- (b) the alteration has not been approved, or the occupier has not been given notice of the approval (see section 122).

**121 Notice of variation or approval of alteration**

- (1) If the Secretary makes a variation or approves an alteration in relation to the registration of an establishment under paragraph 120(2)(a), the Secretary must give the occupier of the establishment written notice of the variation or approval.
- (2) The notice must state the following:
  - (a) details of the variation or approval;
  - (b) if the variation is of the conditions of the registration—the varied conditions;
  - (c) the date the variation or approval takes effect;
  - (d) any other information prescribed by the rules.
- (3) If the certificate of registration for the establishment needs to be changed to take account of the variation or approval, the Secretary



must, within 7 days after making the variation or giving the approval, give the occupier of the establishment a new certificate of registration including the variation or alteration that has been approved.

Note: The registration, as varied, remains in force as provided by section 115.

## **122 Certain alterations of registered establishment must not be made unless approved etc.**

- (1) The occupier of a registered establishment contravenes this subsection if:
- (a) the establishment is altered (including by way of addition to the establishment); and
  - (b) either:
    - (i) the alteration has not been approved under subsection 120(2); or
    - (ii) the alteration has been approved under subsection 120(2) but the Secretary has not given the occupier notice of the approval under section 121.

Note 1: The physical elements of an offence against subsection (3) are set out in this subsection (see section 370).

Note 2: The Secretary may suspend or revoke the registration of the establishment if the occupier contravenes this subsection (see paragraphs 127(1)(j) and 138(1)(j)).

- (2) Subsection (1) does not apply to an alteration of a kind prescribed by the rules.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

### *Fault-based offence*

- (3) The occupier of a registered establishment commits an offence if the occupier contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

**Chapter 4** Registered establishments

**Part 4** Variation of registration

**Division 1** Application by occupier

Section 122

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*Civil penalty provision*

- (4) The occupier of a registered establishment is liable to a civil penalty if the occupier contravenes subsection (1).

Civil penalty:        240 penalty units.

## **Division 2—Variation by Secretary**

### **123 Secretary may make variations in relation to registration**

- (1) The Secretary may do any of the following in relation to the registration of an establishment:
- (a) vary any aspect of the registration, including so that it does not cover:
    - (i) a kind of export operations; or
    - (ii) a kind of prescribed goods; or
    - (iii) if applicable, a place to which goods may be exported;
  - (b) vary the conditions of the registration (including by imposing new conditions);
  - (c) if there is no expiry date for the registration—vary the registration by setting an expiry date for the registration;
  - (d) if there is an expiry date for the registration (whether under paragraph 115(4)(a) or (b))—vary the registration by setting a different expiry date for the registration;
  - (e) if there is an expiry date for the registration under paragraph 115(4)(b)—vary the registration by revoking that expiry date.

Note 1: If the Secretary revokes the expiry date for the registration under paragraph (e), the registration will remain in force:

- (a) if rules made for the purposes of subsection 115(5) apply in relation to the registration—for the period prescribed by the rules; or
- (b) if there are no such rules—indefinitely (unless it is revoked).

Note 2: Certain decisions under subsection (1) are reviewable decisions (see Part 2 of Chapter 11).

- (2) The Secretary may make a variation in relation to the registration of an establishment under paragraph (1)(a), (b) or (c), or set an earlier expiry date for the registration under paragraph (1)(d), only if the Secretary reasonably believes that:
- (a) the integrity of a kind of prescribed goods covered by the registration cannot be ensured; or

**Section 123**

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- (b) it is necessary to do so to ensure:
  - (i) compliance with the requirements of this Act in relation to the export operations and prescribed goods covered by the registration; or
  - (ii) that importing country requirements relating to the export operations and prescribed goods covered by the registration are, or will be, met; or
- (c) the occupier of the establishment is not a fit and proper person (having regard to the matters referred to in section 372); or
- (d) a condition of the registration has been, or is being, contravened; or
- (e) the condition of, or the equipment or facilities in, the establishment has changed; or
- (f) there has been a change to the suitability of the establishment for the export operations covered by the registration; or
- (g) it is necessary to do so:
  - (i) to take account of an event notified under section 146; or
  - (ii) to correct a minor or technical error; or
- (h) the registration needs to be varied for any other reason prescribed by the rules.

*Notice of certain proposed variations*

- (3) The Secretary must not make a variation in relation to the registration of an establishment under paragraph (1)(a), (b) or (c), or set an earlier expiry date for the registration under paragraph (1)(d), unless the Secretary has given a written notice to the occupier of the establishment in accordance with subsection (4).
- (4) A notice under subsection (3) must:
  - (a) specify each proposed variation; and
  - (b) specify the grounds for each proposed variation; and
  - (c) subject to subsection (5), request the occupier of the establishment to give the Secretary, within 14 days after the

- day the notice is given, a written statement showing cause why the proposed variation should not be made; and
- (d) include a statement setting out the occupier's right to seek review of a decision to make the proposed variation.
- (5) A notice under subsection (3) is not required to include the request referred to in paragraph (4)(c) if the Secretary reasonably believes that the grounds for the proposed variation are serious and urgent.

#### **124 Notice of variation**

- (1) If the Secretary makes a variation in relation to the registration of an establishment under subsection 123(1), the Secretary must give the occupier of the establishment written notice of the variation.
- (2) The notice must state the following:
- (a) details of the variation;
  - (b) if the variation is of the conditions of the registration—the varied conditions and any new conditions;
  - (c) if the variation affects the period of effect of the registration:
    - (i) the expiry date for the registration under paragraph 115(4)(a) or (b) (whichever applies); or
    - (ii) if there is no expiry date for the registration—that the registration remains in force unless it is revoked;
  - (d) the date the variation takes effect;
  - (e) any other information prescribed by the rules.
- (3) If the occupier was given a notice (a *show cause notice*) under subsection 123(3) that included the request referred to in paragraph 123(4)(c), the variation must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.
- (4) If the certificate of registration for the establishment needs to be changed to take account of the variation, the Secretary must, within 7 days after making the variation, give the occupier of the

**Chapter 4** Registered establishments

**Part 4** Variation of registration

**Division 2** Variation by Secretary

**Section 124**

---

establishment a new certificate of registration including the variation.

Note: The registration, as varied, remains in force as provided by section 115.

## **Part 5—Suspension of registration**

### **Division 1—Suspension requested by occupier**

#### **125 Occupier may request suspension**

- (1) Subject to subsection (2), the occupier of a registered establishment may request the Secretary to suspend the registration of the establishment in relation to a kind of export operations and a kind of prescribed goods and, if applicable, a place to which goods may be exported.
- (2) A request may be made under subsection (1) only in the circumstances prescribed by the rules.
- (3) A request under subsection (1) may relate to more than one kind of export operations or more than one kind of prescribed goods and, if applicable, more than one place.
- (4) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) state each kind of export operations and each kind of prescribed goods and, if applicable, each place in relation to which the registration is to be suspended; and
  - (c) state the reason for the suspension; and
  - (d) include any other information prescribed by the rules.
- (5) If the Secretary receives a request from the occupier of a registered establishment under subsection (1), the Secretary must, by written notice to the occupier, suspend the registration as requested, with effect on the day specified in the notice.

#### **126 Request to revoke suspension**

- (1) If the registration of an establishment is suspended under section 125, the occupier of the establishment may request the Secretary to revoke the suspension.

**Chapter 4** Registered establishments

**Part 5** Suspension of registration

**Division 1** Suspension requested by occupier

Section 126

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- (2) A request under subsection (1) must:
- (a) be in writing; and
  - (b) state the reason for the request; and
  - (c) include any other information prescribed by the rules.
- (3) If the Secretary receives a request from the occupier of a registered establishment under subsection (1), the Secretary may:
- (a) if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked—revoke the suspension by written notice to the occupier; or
  - (b) in any other case:
    - (i) suspend the registration of the establishment under Division 2 of this Part; or
    - (ii) revoke the registration of the establishment under Division 2 of Part 6.

Note: A decision to suspend or revoke the registration of the establishment is a reviewable decision (see Part 2 of Chapter 11).



## **Division 2—Suspension by Secretary**

### **127 Grounds for suspension—general**

- (1) The Secretary may suspend the registration of an establishment in relation to one or more kinds of export operations and one or more kinds of prescribed goods and, if applicable, one or more places to which goods may be exported if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the registration cannot be ensured;
  - (b) the occupier of the establishment is not a fit and proper person (having regard to the matters referred to in section 372);
  - (c) a requirement referred to in subsection 112(2) is no longer met;
  - (d) a condition of the registration has been, or is being, contravened;
  - (e) the condition of, or the equipment or facilities in, the establishment has changed;
  - (f) there has been a change to the suitability of the establishment for the export operations covered by the registration;
  - (g) the occupier of the establishment:
    - (i) failed to comply with a direction given to the occupier by an authorised officer or the Secretary; or
    - (ii) failed to comply with a request by an authorised officer to provide information or a document; or
    - (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
    - (iv) failed to comply with a request made by an auditor under section 272;
  - (h) the occupier of the establishment has engaged in conduct that:
    - (i) intimidated a person performing functions or exercising powers under this Act; or

**Chapter 4** Registered establishments

**Part 5** Suspension of registration

**Division 2** Suspension by Secretary

Section 127

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- (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
- (i) the occupier of the establishment or any other person who manages or controls export operations carried out at the establishment:
  - (i) made a false, misleading or incomplete statement in an application under this Chapter; or
  - (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
  - (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (j) the occupier of the establishment has contravened a requirement of this Act in relation to the registration of the establishment;
- (k) a ground prescribed by the rules exists.

Note 1: A suspension must not be for more than 12 months (see section 130).

Note 2: A decision to suspend the registration of an establishment under this section is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed suspension*

- (2) The Secretary must not suspend the registration of an establishment under subsection (1) unless the Secretary has given a written notice to the occupier of the establishment in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify each kind of export operations and each kind of prescribed goods and, if applicable, each place in relation to which the registration is proposed to be suspended; and
  - (b) specify the grounds for the proposed suspension; and
  - (c) subject to subsection (4), request the occupier of the registered establishment to give the Secretary, within 14 days after the day the notice is given, a written statement showing

- cause why the registration should not be suspended as proposed; and
- (d) include a statement setting out the occupier's right to seek review of a decision to suspend the registration as proposed.
- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(c) if the Secretary reasonably believes that the grounds for the suspension are serious and urgent.

## **128 Grounds for suspension—overdue relevant Commonwealth liability**

### *Notice of proposed suspension*

- (1) The Secretary may suspend the registration of an establishment in relation to all kinds of export operations and all kinds of prescribed goods if:
- (a) a relevant Commonwealth liability of the occupier of the establishment, or relating to the establishment, is more than 30 days overdue; and
  - (b) the Secretary has given a written notice to the person (the **debtor**) who is liable to pay the relevant Commonwealth liability in accordance with subsection (2); and
  - (c) within 8 days after the notice is given:
    - (i) the relevant Commonwealth liability has not been paid; or
    - (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.
- Note 1: A suspension must not be for more than 12 months (see section 130).
- Note 2: A decision to suspend the registration of an establishment under this section is a reviewable decision (see Part 2 of Chapter 11).
- Note 3: If the Secretary suspends the registration of the establishment under this section, the Secretary may revoke the registration of the establishment in certain circumstances (see section 139).

- (2) A notice under subsection (1) must:

**Section 129**

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- (a) state that a relevant Commonwealth liability of the debtor in relation to a registered establishment is more than 30 days overdue; and
- (b) state that the Secretary may suspend the registration of the establishment in relation to all kinds of export operations and all kinds of prescribed goods if, within 8 days after the notice is given:
  - (i) the relevant Commonwealth liability is not paid; or
  - (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability; and
- (c) include a statement setting out the debtor's right to seek review of a decision to suspend the registration of the establishment.

*Secretary may direct that activities not be carried out*

- (3) If the Secretary suspends the registration of an establishment under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (4) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

**129 Notice of suspension**

- (1) If the Secretary decides to suspend the registration of an establishment under this Division, the Secretary must give the occupier of the establishment a written notice stating the following:
    - (a) that the registration is to be suspended, for the period specified in the notice, in relation to all or specified kinds of export operations and all or specified kinds of prescribed
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goods and, if applicable, all or specified places to which goods may be exported;

- (b) the reasons for the suspension;
- (c) the date the suspension is to start;
- (d) the period of the suspension.

Note: The notice must also state the matters referred to in section 382.

- (2) If the occupier was given a notice (a *show cause notice*) under subsection 127(2) that included the request referred to in paragraph 127(3)(c), the suspension must not start before the earlier of the following:
  - (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

### **130 Period of suspension**

- (1) A suspension of the registration of an establishment under this Division must not be for more than 12 months.
- (2) The Secretary may vary the period of a suspension under this Division by written notice to the occupier of the establishment. However, the total period of the suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension is a reviewable decision (see Part 2 of Chapter 11).

### **131 Revocation of suspension**

The Secretary may revoke a suspension of the registration of an establishment under this Division by written notice to the occupier of the establishment.

### **Division 3—Direction to cease carrying out export operations**

#### **132 Direction to cease carrying out export operations—failure to comply with conditions or requirements of this Act etc.**

- (1) The Secretary may give the occupier of a registered establishment a written direction to cease carrying out one or more kinds of export operations in relation to particular prescribed goods, or a kind of prescribed goods, covered by the registration if the Secretary reasonably suspects that:
- (a) a condition of the registration of the establishment has been contravened, or it is likely that such a condition will be contravened; or
  - (b) the occupier has not complied, or is likely not to comply, with a requirement of this Act; or
  - (c) the integrity of the particular prescribed goods, or the kind of prescribed goods, covered by the registration cannot be ensured, or it is likely that the integrity of the particular prescribed goods, or the kind of prescribed goods, covered by the registration will not be able to be ensured; or
  - (d) the particular prescribed goods, or the kind of prescribed goods, covered by the registration:
    - (i) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or
    - (ii) do not meet, or are not likely to meet, an importing country requirement relating to the goods.
- Note 1: An authorised officer may also give a direction to the occupier of the registered establishment (see section 305).
- Note 2: See also section 309 (general provisions relating to directions).
- (2) A direction under subsection (1) must state:
- (a) the reasons for giving the direction; and

- (b) the date that the occupier is to cease carrying out the relevant export operations in relation to the particular prescribed goods or kind of prescribed goods (as the case may be); and
- (c) that the person may commit an offence or be liable to a civil penalty if the person fails to comply with the direction.

*Registration taken to have been suspended*

- (3) If a direction is given to the occupier of a registered establishment under subsection (1) to cease carrying out one or more kinds of export operations in relation to one or more kinds of prescribed goods covered by the registration, the registration of the establishment is taken to have been suspended in relation to those kinds of export operations and those kinds of goods until the direction is revoked.

### **133 Occupier must comply with direction**

- (1) If the occupier of a registered establishment is given a direction under subsection 132(1), the occupier must comply with the direction.

*Fault-based offence*

- (2) The occupier of a registered establishment commits an offence if:
  - (a) the occupier is given a direction under subsection 132(1); and
  - (b) the occupier engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) The occupier of a registered establishment is liable to a civil penalty if the occupier contravenes subsection (1).

Civil penalty: 240 penalty units.

**Chapter 4** Registered establishments

**Part 5** Suspension of registration

**Division 3** Direction to cease carrying out export operations

Section 134

---

**134 Revocation of direction**

- (1) The Secretary must revoke a direction given to the occupier of a registered establishment under subsection 132(1) if the Secretary is satisfied that the reasons for the direction no longer exist.
- (2) The Secretary must give the occupier of the registered establishment written notice of the revocation.



## **Division 4—Other provisions**

### **135 Effect of suspension**

- (1) If the registration of an establishment is suspended wholly or in part under Division 1 or 2, or is taken to have been suspended under subsection 132(3):
  - (a) the registration of the establishment remains in force while it is suspended; and
  - (b) subject to rules made for the purposes of subsection (2), the requirements of this Act in relation to the registration (including the conditions of the registration) must be complied with while the registration is suspended.
- (2) The rules may prescribe requirements of this Act (including conditions of the registration of an establishment) that are not required to be complied with during any period when the registration is suspended.

### **136 Export operations must not be carried out while registration suspended**

- (1) The occupier of a registered establishment contravenes this subsection if:
  - (a) the occupier was given a notice of suspension in relation to the registration of the establishment under subsection 125(5) or 129(1); and
  - (b) export operations in relation to which the registration was suspended were carried out at the establishment while the registration was suspended.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) The occupier of a registered establishment commits an offence if the occupier contravenes subsection (1).

**Chapter 4** Registered establishments

**Part 5** Suspension of registration

**Division 4** Other provisions

Section 136

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Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) The occupier of a registered establishment is liable to a civil penalty if the occupier contravenes subsection (1).

Civil penalty: 240 penalty units.

## **Part 6—Revocation of registration**

### **Division 1—Revocation requested by occupier**

#### **137 Occupier may request revocation**

- (1) The occupier of a registered establishment (including an establishment in relation to which a suspension is in effect under Part 5) may request the Secretary to revoke the registration of the establishment.

Note: If the occupier does not wish to revoke the registration of the establishment in relation to all kinds of export operations and all kinds of prescribed goods, the occupier may apply to vary the registration under Division 1 of Part 4.

- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) include the information (if any) prescribed by the rules.
- (3) If the Secretary receives a request from the occupier of a registered establishment under subsection (1), the Secretary must, by written notice to the occupier, revoke the registration of the establishment with effect on the day specified in the notice.
- (4) Subsection (3) does not apply if, before the request under subsection (1) was made, the Secretary:
  - (a) had given the occupier of the establishment a notice under subsection 138(2) in relation to the registration; and
  - (b) had not decided whether to revoke the registration or not.

## **Division 2—Revocation by Secretary**

### **138 Grounds for revocation—general**

- (1) The Secretary may revoke the registration of an establishment (including an establishment in relation to which a suspension is in effect under Part 5) if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the registration cannot be ensured;
  - (b) the occupier of the establishment is not a fit and proper person (having regard to the matters referred to in section 372);
  - (c) a requirement referred to in subsection 112(2) is no longer met;
  - (d) a condition of the registration has been, or is being, contravened;
  - (e) the condition of, or the equipment or facilities in, the establishment has changed;
  - (f) there has been a change to the suitability of the establishment for the export operations covered by the registration;
  - (g) the occupier of the establishment:
    - (i) failed to comply with a direction given to the occupier by an authorised officer or the Secretary; or
    - (ii) failed to comply with a request by an authorised officer to provide information or a document; or
    - (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
    - (iv) failed to comply with a request made by an auditor under section 272;
  - (h) the occupier of the establishment has engaged in conduct that:
    - (i) intimidated a person performing functions or exercising powers under this Act; or

- (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
- (i) the occupier of the establishment or any other person who manages or controls export operations carried out at the establishment:
  - (i) made a false, misleading or incomplete statement in an application under this Chapter; or
  - (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
  - (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (j) the occupier of the establishment has contravened a requirement of this Act in relation to the registration of the establishment;
- (k) a ground prescribed by the rules exists.

Note: A decision to revoke the registration of an establishment under this section is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed revocation*

- (2) The Secretary must not revoke the registration of an establishment under subsection (1) unless the Secretary has given a written notice to the occupier of the establishment in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify the grounds for the proposed revocation; and
  - (b) subject to subsection (4), request the occupier of the registered establishment to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the registration should not be revoked; and
  - (c) include a statement setting out the occupier's right to seek review of a decision to revoke the registration.

Section 139

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- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(b) if the Secretary reasonably believes that the grounds for the revocation are serious and urgent.

**139 Grounds for revocation—overdue relevant Commonwealth liability**

- (1) The Secretary may revoke the registration of an establishment if:
- (a) the registration is suspended under subsection 128(1) for non-payment of a relevant Commonwealth liability; and
  - (b) within 90 days after the start of the suspension:
    - (i) the relevant Commonwealth liability had not been paid; or
    - (ii) the person (the *debtor*) who is liable to pay the relevant Commonwealth liability had not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Note: A decision to revoke the registration of an establishment under this section is a reviewable decision (see Part 2 of Chapter 11).

*Secretary may direct that activities not be carried out*

- (2) If the Secretary revokes the registration of an establishment under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (3) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

## 140 Notice of revocation

- (1) If the Secretary decides to revoke the registration of an establishment under this Division, the Secretary must give the occupier of the establishment a written notice stating the following:
  - (a) that the registration of the establishment is to be revoked;
  - (b) the reasons for the revocation;
  - (c) the date the revocation is to take effect.

Note: The notice must also state the matters referred to in section 382.

- (2) If the occupier was given a notice (a *show cause notice*) under subsection 138(2) that included the request referred to in paragraph 138(3)(b), the revocation must not take effect before the earlier of the following:
  - (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

## Division 3—Other provisions

### 141 Export operations must not be carried out after registration of establishment revoked

- (1) A person contravenes this subsection if:
- (a) the person was the occupier of a registered establishment; and
  - (b) the person was given notice of revocation of the registration of the establishment under subsection 137(3) or 140(1); and
  - (c) export operations that were covered by the registration of the establishment were carried out at the establishment after the revocation took effect.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

### 142 Secretary may require action to be taken after registration revoked

- (1) This section applies if:
- (a) a person was given notice of revocation of the registration of an establishment under subsection 137(3) or 140(1); or



- (b) the registration of the establishment was revoked under Division 1 or 2.
- (2) The Secretary may, in writing, direct the occupier of the establishment to take specified action, within a specified period after the registration is revoked, in relation to the export operations and prescribed goods that were covered by the registration. The action must be action that is necessary for the purpose of achieving one or more objects of this Act.
- (3) A direction to a person under subsection (2) must state that the person could commit an offence or be liable to a civil penalty if the person fails to comply with the direction.
- Note: See also section 309 (general provisions relating to directions).
- (4) A person who is given a direction under subsection (2) must comply with the direction.

*Fault-based offence*

- (5) A person commits an offence if:
- (a) the person is given a direction under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

## Part 7—Obligations of occupiers of registered establishments

### 143 Export operations not covered by registration must not be carried out

- (1) The occupier of a registered establishment contravenes this subsection if:
  - (a) a kind of export operations is carried out in relation to a kind of prescribed goods at the establishment; and
  - (b) the registration of the establishment does not cover that kind of export operations in relation to that kind of goods.

*Fault-based offence*

- (2) The occupier of a registered establishment commits an offence if the occupier contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) The occupier of a registered establishment is liable to a civil penalty if the occupier contravenes subsection (1).

Civil penalty: 240 penalty units.

### 144 Conditions of registration must not be contravened

*Registration that is not suspended*

- (1) A person contravenes this subsection if:
  - (a) the person is the occupier of a registered establishment; and
  - (b) the registration is not suspended wholly or in part under Part 5; and
  - (c) a condition of the registration is contravened.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

*Registration that is suspended*

- (4) A person contravenes this subsection if:
- (a) the person is the occupier of a registered establishment; and
  - (b) the registration is suspended wholly or in part under Part 5; and
  - (c) a condition of the registration is contravened; and
  - (d) the condition is required to be complied with during the period of the suspension.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 370).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Section 145

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Civil penalty: 240 penalty units.

**145 Additional or corrected information in relation to application for registration etc.**

- (1) The occupier of a registered establishment must comply with subsection (2) if:
  - (a) the occupier becomes aware that information included in an application made by the occupier under this Chapter, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The occupier of the establishment must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing whether:
  - (a) the requirements of this Act in relation to a matter covered by the registration of the establishment have been, are being, or will be complied with; or
  - (b) importing country requirements relating to a matter covered by the registration of the establishment have been, are being, or will be met.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: The Secretary may suspend or revoke the registration of the establishment if the occupier fails to comply with this subsection (see paragraphs 127(1)(j) and 138(1)(j)).

Note 3: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
  - (a) the person is required to give information to the Secretary under subsection (2); and

(b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

### **146 Notice of changes to occupier of registered establishment**

- (1) The occupier of a registered establishment must notify the Secretary, in writing, as soon as practicable after any of the following events occurs:
- (a) there is a change in the occupier's business structure;
  - (b) if the occupier is an individual—the individual enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
  - (c) if the occupier is a corporation—the corporation:
    - (i) enters into administration (within the meaning of section 435C of the *Corporations Act 2001*); or
    - (ii) is to be wound up (whether by a court or voluntarily);
  - (d) there is a change in the trading name, business address or contact details of the occupier;
  - (e) any other event prescribed by the rules.

Example: For the purposes of paragraph (a), each of the following would be a change in the occupier's business structure:

- (a) a change in a person who manages or controls export operations carried out at the establishment;
- (b) if the occupier is a partnership—a change in the membership of the partnership.

Note: The Secretary may suspend or revoke the registration of an establishment if:

- (a) the occupier of the establishment is not a fit and proper person (see paragraphs 127(1)(b) and 138(1)(b)); or
- (b) the occupier fails to comply with this subsection (see paragraphs 127(1)(j) and 138(1)(j)).

#### *Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary of an event in accordance with subsection (1); and

Section 147

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(b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**147 Notice of person ceasing to be occupier of registered establishment**

- (1) If the person (the *former occupier*) in whose name an establishment is registered ceases:
- (a) to operate the business that carries out export operations in relation to prescribed goods at the establishment; or
  - (b) to manage or control export operations carried out in relation to prescribed goods at the establishment;
- the former occupier must, as soon as practicable after so ceasing, notify the Secretary, in writing, of that fact. The notice must also include contact details for the former occupier.
- (2) The registration of the establishment is taken to have been revoked at the earlier of the following:
- (a) the end of the day a notice under subsection (1) is received by the Secretary;
  - (b) the end of the seventh day after the day the former occupier ceased:
    - (i) to operate the business that carries out export operations in relation to prescribed goods at the establishment; or
    - (ii) to manage or control export operations carried out in relation to prescribed goods at the establishment.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary under subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

## **Part 8—Other matters**

### **148 Register of registered establishments**

- (1) The Secretary must keep a register of information about establishments that are registered under this Chapter.
- (2) The register may be kept at a place and in a form that the Secretary determines, and may be kept by electronic means.
- (3) The register must include the information in relation to a registered establishment prescribed by the rules.

## **Chapter 5—Approved arrangements**

### **Part 1—Introduction**

#### **149 Simplified outline of this Chapter**

The Secretary may, on application by a person, approve a proposed arrangement for a kind of export operations in relation to a kind of prescribed goods.

A proposed arrangement may relate to more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places.

An approved arrangement is subject to certain conditions.

An approved arrangement may remain in force indefinitely or may cease to be in force on an expiry date.

If there is an expiry date for an approved arrangement, the approved arrangement may be renewed.

An approved arrangement or the conditions of the approved arrangement may be varied.

An approved arrangement, or a part of an approved arrangement, may be suspended. An approved arrangement may be revoked.

A show cause notice must be given to the holder of an approved arrangement before the approved arrangement may be varied, suspended or revoked (except in serious and urgent cases or if the holder has requested the variation, suspension or revocation).

The holder of an approved arrangement must comply with certain obligations.



## **Part 2—Approval of proposed arrangement**

### **150 Application for approval of proposed arrangement**

- (1) A person may apply to the Secretary to approve a proposed arrangement for a kind of export operations in relation to a kind of prescribed goods.
- (2) A proposed arrangement:
  - (a) must be recorded in writing in one or more documents; and
  - (b) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
  - (c) may, but is not required to, specify one or more places to which goods covered by the arrangement are to be exported.
- (3) An application may relate to more than one proposed arrangement.

Note 1: The export of a kind of prescribed goods may be prohibited unless export operations in relation to the goods are carried out in accordance with an approved arrangement covering the export operations and the goods (see section 29 and the rules made for the purposes of that section).

Note 2: Section 377 sets out requirements for applications.

### **151 Secretary must decide whether to approve proposed arrangement**

- (1) On receiving an application under section 150 to approve a proposed arrangement, the Secretary must decide:
  - (a) to approve the arrangement; or
  - (b) to refuse to approve the arrangement.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is to approve more than one proposed arrangement, the Secretary may decide to approve some or all of the proposed arrangements.

## Section 151

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Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 4: A decision to refuse to approve a proposed arrangement is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may approve the proposed arrangement if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following requirements are met:
- (a) if the applicant is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the applicant is a fit and proper person;
  - (b) either:
    - (i) all relevant Commonwealth liabilities of the applicant have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the applicant have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;
  - (c) carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the arrangement will ensure:
    - (i) compliance with the requirements of this Act in relation to those export operations and goods; and
    - (ii) that importing country requirements relating to those export operations and goods will be met;
  - (d) any other requirement prescribed by the rules.
- Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).
- (3) If the Secretary approves the proposed arrangement, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the approved arrangement.

Note 1: If there is no expiry date for the approved arrangement, the approved arrangement remains in force unless it is revoked (see subsection 154(1)).

Note 2: A decision to set an expiry date for an approved arrangement is a reviewable decision (see Part 2 of Chapter 11).

- (4) The Secretary may set an expiry date for the approved arrangement under subsection (3) even if rules made for the purposes of subsection 154(5) apply in relation to the approved arrangement.

### **152 Conditions of approved arrangement**

- (1) If the Secretary approves a proposed arrangement, the approved arrangement is subject to:
- (a) the conditions provided by this Act; and
  - (b) the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the approved arrangement); and
  - (c) any additional conditions that the Secretary considers appropriate and that are specified in the notice given to the applicant under section 153.

Note 1: The holder of an approved arrangement may commit an offence or be liable to a civil penalty if a condition of the approved arrangement is contravened (see section 184).

Note 2: An approved arrangement may be suspended or revoked if a condition of the approved arrangement is contravened (see paragraphs 171(1)(d) and 179(1)(d)).

Note 3: A decision to approve a proposed arrangement subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

Note 4: Part 7 sets out additional obligations of the holder of an approved arrangement.

- (2) Without limiting paragraph (1)(b), the rules may prescribe conditions in relation to any or all of the following:
- (a) the holder of an approved arrangement;
  - (b) a kind of export operations;
  - (c) a kind of prescribed goods;

Section 153

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- (d) importing country requirements relating to a kind of export operations or a kind of prescribed goods.
- (3) Without limiting paragraph (1)(b) or (c), the rules may prescribe conditions, and the Secretary may impose conditions, that are required to be complied with before or after the export of the goods to which the conditions relate.
- (4) For the purposes of this Act, conditions to which an approved arrangement is subject under subsection (1) or section 157 are conditions of the approved arrangement.

**153 Notice of decision**

If the Secretary approves a proposed arrangement, the Secretary must give the applicant a written notice stating the following information:

- (a) the date the approved arrangement takes effect;
- (b) that the approved arrangement remains in force indefinitely or the expiry date for the approved arrangement;
- (c) any conditions prescribed by the rules that the Secretary has decided are not to be conditions of the approved arrangement;
- (d) any additional conditions of the approved arrangement;
- (e) any other information prescribed by the rules.

**154 Period of effect of approved arrangement**

*Approved arrangements that have no expiry date*

- (1) If there is no expiry date for an approved arrangement, the approved arrangement remains in force unless:
  - (a) it is revoked under Part 6; or
  - (b) it is taken to have been revoked under section 188.

*Approved arrangements that have an expiry date*

- (2) If there is an expiry date for an approved arrangement (including an approved arrangement that has been renewed under Part 3), the approved arrangement remains in force until the end of that expiry date unless:
- (a) the approved arrangement is renewed under Part 3 on or before that date; or
  - (b) the approved arrangement is revoked under Part 6, or is taken to have been revoked under section 188, on or before that date.
- (3) There is an expiry date for an approved arrangement if:
- (a) rules made for the purposes of subsection (5) apply in relation to the approved arrangement; or
  - (b) an expiry date for the approved arrangement set under subsection 151(3) or 156(3) or paragraph 165(1)(c) or (d) is in force in relation to the approved arrangement.
- (4) The ***expiry date*** for an approved arrangement is:
- (a) if rules made for the purposes of subsection (5) apply in relation to the approved arrangement and no expiry date set under subsection 151(3) or 156(3) or paragraph 165(1)(c) or (d) is in force in relation to the approved arrangement—the last day of the period prescribed by the rules; or
  - (b) if an expiry date for the approved arrangement set under subsection 151(3) or 156(3) or paragraph 165(1)(c) or (d) is in force in relation to the approved arrangement—that date.

*Rules may prescribe period of effect of approved arrangement*

- (5) The rules may prescribe the period during which an approved arrangement remains in force. The rules may apply in relation to:
- (a) approved arrangements generally; or
  - (b) approved arrangements for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

## Part 3—Renewal of approved arrangement

### 155 Application to renew approved arrangement

- (1) This section applies in relation to an approved arrangement (including an approved arrangement that is suspended, or a part of which is suspended, under Part 5) if there is an expiry date for the approved arrangement.

Note: See subsections 154(3) and (4) in relation to the expiry date for an approved arrangement.

- (2) The holder of the approved arrangement may apply to the Secretary to renew the approved arrangement.

Note: Section 377 sets out requirements for applications.

- (3) An application for renewal may relate to more than one approved arrangement.

- (4) An application for renewal must be made:

- (a) within the period prescribed by the rules; or
- (b) if the Secretary allows a longer period—within that longer period.

- (5) If an application to renew an arrangement is made after the period applying under subsection (4):

- (a) the application is taken to be an application to approve the arrangement; and
- (b) Part 2 applies in relation to the application; and
- (c) the other provisions of this Part do not apply in relation to the application.

### 156 Secretary must decide whether to renew approved arrangement

- (1) On receiving an application under section 155 to renew an approved arrangement, the Secretary must decide:
- (a) to renew the approved arrangement; or

(b) to refuse to renew the approved arrangement.

- Note 1: See section 379 for matters relating to dealing with applications.
- Note 2: If the application is to renew more than one approved arrangement, the Secretary may decide to renew some or all of the approved arrangements.
- Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).
- Note 4: A decision to refuse to renew an approved arrangement is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may refuse to renew the approved arrangement if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:
- (a) if the holder of the approved arrangement is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is a fit and proper person;
  - (b) either:
    - (i) all relevant Commonwealth liabilities of the holder have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the holder have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;
  - (c) the holder of the approved arrangement has complied with the requirements of this Act in relation to the export operations and goods covered by the approved arrangement;
  - (d) the conditions of the approved arrangement have been, and are being, complied with;
  - (e) carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement will ensure:
    - (i) compliance with the requirements of this Act in relation to those export operations and goods; and

**Section 157**

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- (ii) that importing country requirements relating to those export operations and goods will be met;
  - (f) any other requirement prescribed by the rules is met.
- Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).
- (3) If the Secretary renews an approved arrangement, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the approved arrangement.
- Note 1: If there is no expiry date for the approved arrangement, the approved arrangement remains in force unless it is revoked (see subsection 154(1)).
- Note 2: A decision to set an expiry date for a renewed approved arrangement is a reviewable decision (see Part 2 of Chapter 11).
- (4) The Secretary may set an expiry date for the approved arrangement under subsection (3) even if rules made for the purposes of subsection 154(5) apply in relation to the approved arrangement.

**157 Conditions of renewed approved arrangement**

- (1) If the Secretary renews an approved arrangement, the approved arrangement is subject to:
- (a) the conditions provided by this Act; and
  - (b) the conditions prescribed by rules made for the purposes of paragraph 152(1)(b) (other than any of those conditions that the Secretary decides are not to be conditions of the approved arrangement); and
  - (c) any additional conditions that the Secretary considers appropriate and that are specified in the notice given under section 158.
- Note 1: The holder of an approved arrangement may commit an offence or be liable to a civil penalty if a condition of the approved arrangement is contravened (see section 184).
- Note 2: An approved arrangement may be suspended or revoked if a condition of the approved arrangement is contravened (see paragraphs 171(1)(d) and 179(1)(d)).



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Section 158

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Note 3: A decision to renew an approved arrangement subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

Note 4: Part 7 sets out additional obligations of the holder of an approved arrangement.

- (2) Without limiting paragraph (1)(c), the Secretary may impose conditions that are required to be complied with before or after the export of the goods to which the conditions relate.

### **158 Notice of decision**

If an approved arrangement is renewed, the Secretary must give the holder of the approved arrangement a written notice stating the information referred to in section 153.

## **Part 4—Variation of approved arrangement**

### **Division 1—Variations by holder**

#### **Subdivision A—Non-significant variations**

#### **159 Holder may make non-significant variations of approved arrangement**

- (1) The holder of an approved arrangement may implement a variation, or 2 or more variations, of the approved arrangement if:
  - (a) the variation is, or the variations are, not an alternative regulatory arrangement within the meaning of subsection 379B(1); and
  - (b) the holder and the Secretary consider that the variation, or the combined effect of the variations, is not significant (having regard to the matters referred to in section 164).

- (2) If the holder of an approved arrangement implements one or more variations of the approved arrangement under subsection (1), the holder must, as soon as practicable after doing so, make a written record of each variation (by varying the text of the approved arrangement or creating a separate document) and the reasons for the variation.

Note: The Secretary may suspend or revoke the approved arrangement if the holder contravenes this subsection (see paragraphs 171(1)(k) and 179(1)(k)).

- (3) If:
  - (a) the holder of an approved arrangement implements a variation of the approved arrangement under subsection (1); and
  - (b) the holder makes a written record of the variation as required by subsection (2);

then, despite any other provision of this Act, a person does not commit an offence, and is not liable to a civil penalty, only because the variation was implemented before the written record was made.

*Civil penalty provision*

- (4) The holder of an approved arrangement is liable to a civil penalty if the holder contravenes subsection (2).

Civil penalty: 60 penalty units.

**160 Date of effect of varied approved arrangement**

If:

- (a) the holder of an approved arrangement implements a variation of the approved arrangement under subsection 159(1); and
- (b) the holder makes a written record of the variation as required by subsection 159(2);

the approved arrangement is taken to have been varied on the date the record of the variation was made under subsection 159(2).

Note: The approved arrangement, as varied, remains in force as provided by section 154.

**Subdivision B—Significant variations and variation of conditions**

**161 Application by holder for approval of approved alternative regulatory arrangement or other significant variation or to vary conditions**

- (1) The holder of an approved arrangement may apply to the Secretary:
- (a) to approve a variation of the approved arrangement to implement an alternative regulatory arrangement approved under paragraph 379C(1)(a); or

Section 161

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- (b) to approve any other variation, or variations, of the approved arrangement if the holder and the Secretary consider that the variation, or the combined effect of the variations, is significant (having regard to the matters referred to in section 164); or
- (c) to vary the conditions of the approved arrangement.

Note: Section 377 sets out requirements for applications. A single application may be made to approve a variation of an approved arrangement and to renew the approved arrangement.

- (2) If the Secretary receives an application under subsection (1) to approve a variation, or vary conditions, the Secretary must decide:
  - (a) to approve the variation or vary the conditions; or
  - (b) to refuse to approve the variation or vary the conditions.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 3: A decision to refuse the application is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the holder written notice of the decision (see section 382).

- (3) The Secretary may refuse to approve the variation, or vary the conditions, if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:
  - (a) either:
    - (i) all relevant Commonwealth liabilities of the holder of the approved arrangement have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the holder have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;
  - (b) carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement as proposed to be varied will ensure:

- (i) compliance with the requirements of this Act in relation to those export operations and goods; and
  - (ii) that importing country requirements relating to those export operations and goods will be met; and
  - (iii) the integrity of the goods;
- (c) any other requirement prescribed by the rules is met.

Note 1: For the purposes of paragraph (3)(a), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

Note 2: The holder of the approved arrangement may commit an offence or be liable to a civil penalty if:

- (a) a variation of the approved arrangement, or of the conditions of the approved arrangement, referred to in subsection (1) is implemented; and
- (b) the variation has not been approved, or the holder has not been given notice of the approval (see section 163).

## **162 Notice of variation**

- (1) If the Secretary approves a variation of an approved arrangement or varies the conditions of an approved arrangement under paragraph 161(2)(a), the Secretary must give the holder of the approved arrangement written notice of the approval or variation.
- (2) The notice must state the following:
  - (a) details of the variation that has been approved;
  - (b) if the variation is of the conditions of the approved arrangement—the varied conditions;
  - (c) the date the variation takes effect;
  - (d) any other information prescribed by the rules.

Note: The approved arrangement, as varied, remains in force as provided by section 154.

## **163 Varied approved arrangement must not be implemented unless variation approved etc.**

- (1) The holder of an approved arrangement contravenes this subsection if:

**Section 164**

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- (a) a variation of the approved arrangement, or of the conditions of the approved arrangement, referred to in subsection 161(1) is implemented; and
- (b) either:
  - (i) the variation has not been approved under paragraph 161(2)(a); or
  - (ii) the variation has been approved under paragraph 161(2)(a) but the Secretary has not given the holder notice of the approval under section 162.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

Note 2: The Secretary may suspend or revoke the approved arrangement if the holder contravenes this subsection (see paragraphs 171(1)(k) and 179(1)(k)).

*Fault-based offence*

- (2) The holder of an approved arrangement commits an offence if the holder contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) The holder of an approved arrangement is liable to a civil penalty if the holder contravenes subsection (1).

Civil penalty: 240 penalty units.

**Subdivision C—Matters relating to whether proposed variation of approved arrangement is significant**

**164 Matters to which regard must be had in considering whether proposed variation of approved arrangement is significant**

- (1) This section has effect for the purposes of paragraphs 159(1)(b) and 161(1)(b).

- (2) The matters to which the holder of an approved arrangement and the Secretary must have regard in considering whether a variation, or the combined effect of 2 or more variations, of the approved arrangement is significant are as follows:
- (a) whether the variation, or the variations, may have the effect that carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement will no longer ensure:
    - (i) compliance with the requirements of this Act in relation to those export operations and goods; or
    - (ii) that importing country requirements relating to those export operations and goods will be met;
  - (b) whether the variation, or the variations, may adversely affect the Secretary's ability to accurately assess:
    - (i) whether carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement will ensure the matters referred to in subparagraphs (a)(i) and (ii); or
    - (ii) whether the integrity of a kind of prescribed goods covered by the approved arrangement can be ensured;
  - (c) whether the variation or any of the variations:
    - (i) is of a kind of export operations or a kind of prescribed goods covered by the approved arrangement; or
    - (ii) is of a kind prescribed by the rules.

## Division 2—Variation required or made by Secretary

### 165 Secretary may require approved arrangement to be varied or make certain variations of approved arrangement

- (1) The Secretary may do any of the following in relation to an approved arrangement:
- (a) require the holder of the approved arrangement to vary any aspect of the approved arrangement, including so that it does not cover:
    - (i) a kind of export operations; or
    - (ii) a kind of prescribed goods; or
    - (iii) if applicable, a place to which goods may be exported;
  - (b) vary the conditions of the approved arrangement (including by imposing new conditions);
  - (c) if there is no expiry date for the approved arrangement—vary the approved arrangement by setting an expiry date for the approved arrangement;
  - (d) if there is an expiry date for the approved arrangement (whether under paragraph 154(4)(a) or (b))—vary the approved arrangement by setting a different expiry date for the approved arrangement;
  - (e) if there is an expiry date for the approved arrangement under paragraph 154(4)(b)—vary the approved arrangement by revoking that expiry date.
- Note 1: If the Secretary revokes the expiry date for the approved arrangement under paragraph (e), the approved arrangement will remain in force:
- (a) if rules made for the purposes of subsection 154(5) apply in relation to the approved arrangement—for the period prescribed by the rules; or
  - (b) if there are no such rules—indefinitely (unless it is revoked).
- Note 2: Certain decisions under subsection (1) are reviewable decisions (see Part 2 of Chapter 11).
- (2) The Secretary may require the holder of the approved arrangement to vary the approved arrangement under paragraph (1)(a), or make



a variation in relation to the approved arrangement under paragraph (1)(b) or (c), or set an earlier expiry date for the approved arrangement under paragraph (1)(d), only if the Secretary reasonably believes that:

- (a) the integrity of a kind of prescribed goods covered by the approved arrangement cannot be ensured; or
- (b) if the holder is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is not a fit and proper person; or
- (c) export operations covered by the approved arrangement have not been, or are not being, carried out in accordance with the approved arrangement, or a condition of the approved arrangement has been, or is being, contravened; or
- (d) circumstances relating to a kind of export operations carried out in relation to a kind of prescribed goods covered by the approved arrangement have changed; or
- (e) it is necessary to do so to ensure:
  - (i) compliance with the requirements of this Act in relation to the export operations and goods covered by the approved arrangement; and
  - (ii) that importing country requirements relating to the export operations and goods covered by the approved arrangement are met; or
- (f) an importing country requirement relating to a kind of prescribed goods covered by the approved arrangement has changed; or
- (g) it is necessary to do so:
  - (i) to take account of an event notified under section 186; or
  - (ii) to correct a minor or technical error; or
- (h) the approved arrangement needs to be varied for any other reason prescribed by the rules.

Section 166

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*Notice of certain proposed variations*

- (3) The Secretary must not require the holder to vary the approved arrangement under paragraph (1)(a), or make a variation in relation to the approved arrangement under paragraph (1)(b) or (c), or set an earlier expiry date for the approved arrangement under paragraph (1)(d), unless the Secretary has given a written notice to the holder of the approved arrangement in accordance with subsection (4).
- (4) A notice under subsection (3) must:
  - (a) specify each proposed variation; and
  - (b) specify the grounds for each proposed variation; and
  - (c) subject to subsection (5), request the holder of the approved arrangement to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
  - (d) include a statement setting out the holder's right to seek review of a decision to make the proposed variation.
- (5) A notice under subsection (3) is not required to include the request referred to in paragraph (4)(c) if the Secretary reasonably believes that the grounds for the proposed variation are serious and urgent.

**166 Variations required by the Secretary**

- (1) If, under paragraph 165(1)(a), the Secretary requires the holder of an approved arrangement to vary the approved arrangement, the Secretary must give the holder a written notice (a **variation notice**) requiring the holder:
  - (a) to vary the approved arrangement as specified in the variation notice; and
  - (b) to give the varied approved arrangement to the Secretary, or otherwise make the varied approved arrangement available to the Secretary for evaluation, by the date specified in the variation notice.

Note: If the holder does not comply with the variation notice, the Secretary may suspend or revoke the approved arrangement (see paragraphs 171(1)(k) and 179(1)(k)).

- (2) If the holder complies with the variation notice, the holder is taken to have applied to the Secretary to approve the varied approved arrangement.

*Secretary must decide whether to approve varied approved arrangement*

- (3) If the varied approved arrangement is given to the Secretary, or otherwise made available to the Secretary, as required by the variation notice, the Secretary must decide:
- (a) to approve the varied approved arrangement; or
  - (b) to refuse to approve the varied approved arrangement.
- (4) The Secretary may approve the varied approved arrangement if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that all the variations specified in the variation notice have been made.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 3: A decision to refuse to approve a varied approved arrangement is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the holder of the approved arrangement written notice of the decision (see section 382).

- (5) The Secretary may approve the varied approved arrangement subject to any conditions the Secretary considers appropriate.

Note: A decision to approve a varied approved arrangement subject to conditions is a reviewable decision (see Part 2 of Chapter 11).

Section 167

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*Notice of approval of varied approved arrangement*

- (6) If the Secretary approves the varied approved arrangement, the Secretary must give the holder of the varied approved arrangement a written notice stating:
- (a) the date the varied approved arrangement takes effect; and
  - (b) any other information prescribed by the rules.

Note: The varied approved arrangement remains in force as provided by section 154.

*When varied approved arrangement takes effect*

- (7) If the holder of the approved arrangement was given a notice (a **show cause notice**) under subsection 165(3) that included the request referred to in paragraph 165(4)(c), the varied approved arrangement must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

Note: The varied approved arrangement remains in force as provided by section 154.

**167 Varied approved arrangement must not be implemented unless approved etc.**

If the holder of an approved arrangement has been given a variation notice in relation to the approved arrangement under subsection 166(1), the holder must not implement a variation specified in the variation notice unless:

- (a) the varied approved arrangement has been approved under paragraph 166(3)(a); and
- (b) the Secretary has given the holder written notice of the approval under subsection 166(6).

Note: If the holder contravenes this section, the Secretary may:

- (a) suspend or revoke the approved arrangement (see paragraphs 171(1)(k) and 179(1)(k)); or

- (b) refuse to issue a government certificate in relation to a kind of goods covered by the approved arrangement (see section 67) or refuse to issue an export permit for the goods (see section 225).

### **168 Notice of variations made by the Secretary**

- (1) If the Secretary makes a variation in relation to an approved arrangement under paragraph 165(1)(b), (c), (d) or (e), the Secretary must give the holder of the approved arrangement written notice of the variation.
- (2) The notice must state the following:
  - (a) if the variation is of the conditions of the approved arrangement—the varied conditions and any new conditions;
  - (b) if the variation affects the period of effect of the approved arrangement:
    - (i) the expiry date for the approved arrangement under paragraph 154(4)(a) or (b) (whichever applies); or
    - (ii) if there is no expiry date for the approved arrangement—that the approved arrangement remains in force unless it is revoked;
  - (c) the date the variation takes effect;
  - (d) any other information prescribed by the rules.
- (3) If the holder of the approved arrangement was given a notice (a *show cause notice*) under subsection 165(3) that included the request referred to in paragraph 165(4)(c), the variation must not take effect before the earlier of the following:
  - (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

Note: The varied approved arrangement remains in force as provided by section 154.

## **Part 5—Suspension of approved arrangement**

### **Division 1—Suspension requested by holder**

#### **169 Holder may request suspension**

- (1) Subject to subsection (2), the holder of an approved arrangement may request the Secretary to suspend the approved arrangement or a part of the approved arrangement.

**Note:** A request might be made under this subsection if, for example, the holder of the approved arrangement does not have personnel with appropriate qualifications or expertise to carry out a particular kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement.

- (2) A request may be made under subsection (1) only in the circumstances prescribed by the rules.
- (3) A request under subsection (1) may relate to more than one kind of export operations or more than one kind of prescribed goods and, if applicable, more than one place to which goods may be exported.
- (4) A request under subsection (1) must:
- (a) be in writing; and
  - (b) specify whether the whole or a specified part of the approved arrangement is to be suspended; and
  - (c) state each kind of export operations and each kind of prescribed goods and, if applicable, each place in relation to which the approved arrangement is to be suspended; and
  - (d) specify the reason for the suspension; and
  - (e) include any other information prescribed by the rules.
- (5) If the Secretary receives a request from the holder of an approved arrangement under subsection (1) to suspend the whole or a part of the approved arrangement, the Secretary must, by written notice to the holder, suspend the approved arrangement, or the part of the

approved arrangement, as requested, with effect on the day specified in the notice.

### **170 Request to revoke suspension**

- (1) If an approved arrangement, or a part of an approved arrangement, is suspended under section 169, the holder of the approved arrangement may request the Secretary to revoke the suspension.
- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) state the reason for the request; and
  - (c) include any other information prescribed by the rules.
- (3) If the Secretary receives a request under subsection (1) from the holder of an approved arrangement, the Secretary may:
  - (a) if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked—revoke the suspension by written notice to the holder; or
  - (b) in any other case:
    - (i) suspend the approved arrangement, or a part of the approved arrangement, under Division 2 of this Part; or
    - (ii) revoke the approved arrangement under Division 2 of Part 6.

Note: A decision to suspend the approved arrangement, or a part of the approved arrangement, or to revoke the approved arrangement is a reviewable decision (see Part 2 of Chapter 11).

## **Division 2—Suspension by Secretary**

### **171 Grounds for suspension—general**

- (1) The Secretary may suspend an approved arrangement, or a part of an approved arrangement, if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the approved arrangement cannot be ensured;
  - (b) if the holder of the approved arrangement is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is not a fit and proper person;
  - (c) a requirement referred to in subsection 151(2) is no longer met;
  - (d) export operations covered by the approved arrangement have not been, or are not being, carried out in accordance with the approved arrangement, or a condition of the approved arrangement has been, or is being, contravened;
  - (e) circumstances relating to any of the export operations or goods covered by the approved arrangement have changed;
  - (f) carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement will no longer ensure:
    - (i) compliance with the requirements of this Act in relation to those export operations and goods; and
    - (ii) that importing country requirements relating to those export operations and goods are met;
  - (g) export operations have not been carried out for a continuous period of 12 months or more in relation to some or all of the goods covered by the approved arrangement;
  - (h) the holder of the approved arrangement:
    - (i) failed to comply with a direction given to the holder by an authorised officer or the Secretary; or



Section 171

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- (ii) failed to comply with a request by an authorised officer to provide information or a document; or
- (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
- (iv) failed to comply with a request made by an auditor under section 272;
- (i) the holder of the approved arrangement has engaged in conduct that:
  - (i) intimidated a person performing functions or exercising powers under this Act; or
  - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
- (j) the holder of the approved arrangement, or a person who manages or controls or carries out export operations covered by the approved arrangement:
  - (i) made a false, misleading or incomplete statement in an application under this Chapter; or
  - (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
  - (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (k) the holder of the approved arrangement has contravened a requirement of this Act in relation to the approved arrangement;
- (l) a ground prescribed by the rules exists.

Note 1: A suspension must not be for more than 12 months (see section 174).

Note 2: A decision to suspend an approved arrangement, or a part of an approved arrangement, under this section is a reviewable decision (see Part 2 of Chapter 11).

Section 172

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*Notice of proposed suspension*

- (2) The Secretary must not suspend an approved arrangement, or a part of an approved arrangement, under subsection (1) unless the Secretary has given a written notice to the holder of the approved arrangement in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify whether the whole of the approved arrangement is proposed to be suspended, or whether a part of the approved arrangement is proposed to be suspended and, if so, which part; and
  - (b) specify the grounds for the proposed suspension; and
  - (c) subject to subsection (4), request the holder of the approved arrangement to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the approved arrangement, or the part of the approved arrangement, should not be suspended as proposed; and
  - (d) include a statement setting out the holder's right to seek review of a decision to suspend the approved arrangement, or the part of the approved arrangement, as proposed.
- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(c) if the Secretary reasonably believes that the grounds for the suspension are serious and urgent.

**172 Grounds for suspension—overdue relevant Commonwealth liability**

*Notice of proposed suspension*

- (1) The Secretary may suspend an approved arrangement for a period if:
  - (a) a relevant Commonwealth liability of the holder of the approved arrangement (the *debtor*) is more than 30 days overdue; and
  - (b) the Secretary has given a written notice to the debtor in accordance with subsection (2); and

- (c) within 8 days after the notice is given:
- (i) the relevant Commonwealth liability has not been paid;  
or
  - (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Note 1: A suspension must not be for more than 12 months (see section 174).

Note 2: A decision to suspend an approved arrangement under this section is a reviewable decision (see Part 2 of Chapter 11).

Note 3: If the Secretary suspends an approved arrangement under this section, the Secretary may revoke the approved arrangement in certain circumstances (see section 180).

- (2) A notice under subsection (1) must:
- (a) state that a relevant Commonwealth liability of the debtor is more than 30 days overdue; and
  - (b) state that the Secretary may suspend the debtor's approved arrangement if, within 8 days after the notice is given:
    - (i) the relevant Commonwealth liability is not paid; or
    - (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability;  
and
  - (c) include a statement setting out the debtor's right to seek review of a decision to suspend the approved arrangement.

*Secretary may direct that activities not be carried out*

- (3) If the Secretary suspends the debtor's approved arrangement under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

Section 173

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*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (4) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

**173 Notice of suspension**

- (1) If the Secretary decides to suspend an approved arrangement, or a part of an approved arrangement, under this Division, the Secretary must give the holder of the approved arrangement a written notice stating the following:
- (a) that the approved arrangement, or the part of the approved arrangement, is to be suspended;
  - (b) the reasons for the suspension;
  - (c) the date the suspension is to start;
  - (d) the period of the suspension.

Note: The notice must also state the matters referred to in section 382.

- (2) If the holder of the approved arrangement was given a notice (a *show cause notice*) under subsection 171(2) that included the request referred to in paragraph 171(3)(c), the suspension must not start before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

**174 Period of suspension**

- (1) A suspension of an approved arrangement, or a part of an approved arrangement, under this Division must not be for more than 12 months.
- (2) The Secretary may vary the period of a suspension under this Division by written notice to the holder of the approved arrangement. However, the total period of the suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension is a reviewable decision (see Part 2 of Chapter 11).

### **175 Revocation of suspension**

The Secretary may revoke a suspension of an approved arrangement, or a part of an approved arrangement, under this Division by written notice to the holder of the approved arrangement.

## **Division 3—Other provisions**

### **176 Effect of suspension**

- (1) If an approved arrangement, or a part of an approved arrangement, is suspended under Division 1 or 2:
  - (a) the approved arrangement remains in force while it is suspended; and
  - (b) subject to rules made for the purposes of subsection (2), the requirements of this Act in relation to the approved arrangement (including the conditions of the approved arrangement) must be complied with while the approved arrangement, or the part of the approved arrangement, is suspended.
- (2) The rules may prescribe requirements of this Act (including conditions of an approved arrangement) that are not required to be complied with during any period when the approved arrangement, or a part of the approved arrangement, is suspended.

### **177 Export operations must not be carried out while approved arrangement suspended**

- (1) The holder of an approved arrangement contravenes this subsection if:
  - (a) the holder was given a notice of suspension of the whole or a part of the approved arrangement under subsection 169(5) or 173(1); and
  - (b) export operations in relation to which the approved arrangement was suspended were carried out under the approved arrangement while it was suspended.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) The holder of an approved arrangement commits an offence if the holder contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (3) The holder of an approved arrangement is liable to a civil penalty if the holder contravenes subsection (1).

Civil penalty: 240 penalty units.

## **Part 6—Revocation of approved arrangement**

### **Division 1—Revocation requested by holder**

#### **178 Holder may request revocation**

- (1) The holder of an approved arrangement (including an approved arrangement that is suspended, or a part of which is suspended, under Part 5) may request the Secretary to revoke the approved arrangement.

Note: If the holder does not wish to revoke the approved arrangement for all purposes, the holder may apply to vary the approved arrangement under Subdivision B of Division 1 of Part 4.

- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) include the information (if any) prescribed by the rules.
- (3) If the Secretary receives a request under subsection (1) to revoke an approved arrangement, the Secretary must, by written notice to the holder of the approved arrangement, revoke the approved arrangement with effect on the day specified in the notice.
- (4) Subsection (3) does not apply if, before the request under subsection (1) was made, the Secretary:
  - (a) had given the holder of the approved arrangement a notice under subsection 179(2) in relation to the approved arrangement; and
  - (b) had not decided whether to revoke the approved arrangement or not.



## **Division 2—Revocation by Secretary**

### **179 Grounds for revocation—general**

- (1) The Secretary may revoke an approved arrangement (including an approved arrangement that is suspended, or a part of which is suspended, under Part 5) if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the approved arrangement cannot be ensured;
  - (b) if the holder of the approved arrangement is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is not a fit and proper person;
  - (c) a requirement referred to in subsection 151(2) is no longer met;
  - (d) export operations covered by the approved arrangement have not been, or are not being, carried out in accordance with the approved arrangement, or a condition of the approved arrangement has been, or is being, contravened;
  - (e) circumstances relating to any of the export operations or goods covered by the approved arrangement have changed;
  - (f) carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement will no longer ensure:
    - (i) compliance with the requirements of this Act in relation to those export operations and goods; and
    - (ii) that importing country requirements relating to those export operations and goods are met;
  - (g) export operations have not been carried out for a continuous period of 12 months or more in relation to some or all of the prescribed goods covered by the approved arrangement;
  - (h) the holder of the approved arrangement:
    - (i) failed to comply with a direction given to the holder by an authorised officer or the Secretary; or

Section 179

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- (ii) failed to comply with a request by an authorised officer to provide information or a document; or
- (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
- (iv) failed to comply with a request made by an auditor under section 272;
- (i) the holder of the approved arrangement has engaged in conduct that:
  - (i) intimidated a person performing functions or exercising powers under this Act;
  - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
- (j) the holder of the approved arrangement, or a person who manages or controls or carries out export operations covered by the approved arrangement:
  - (i) made a false, misleading or incomplete statement in an application under this Chapter; or
  - (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
  - (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (k) the holder of the approved arrangement has contravened a requirement of this Act in relation to the approved arrangement;
- (l) a ground prescribed by the rules exists.

Note: A decision to revoke an approved arrangement under this section is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed revocation*

- (2) The Secretary must not revoke an approved arrangement under subsection (1) unless the Secretary has given a written notice to the

holder of the approved arrangement in accordance with subsection (3).

- (3) A notice under subsection (2) must:
- (a) specify the grounds for the proposed revocation; and
  - (b) subject to subsection (4), request the holder of the approved arrangement to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the approved arrangement should not be revoked; and
  - (c) include a statement setting out the holder's right to seek review of a decision to revoke the approved arrangement.
- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(b) if the Secretary reasonably believes that the grounds for the revocation are serious and urgent.

### **180 Grounds for revocation—overdue relevant Commonwealth liability**

- (1) The Secretary may revoke an approved arrangement if:
- (a) the approved arrangement is suspended under subsection 172(1) for non-payment of a relevant Commonwealth liability; and
  - (b) within 90 days after the start of the suspension:
    - (i) the relevant Commonwealth liability had not been paid; or
    - (ii) the person (the *debtor*) who is liable to pay the relevant Commonwealth liability had not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Note: A decision to revoke an approved arrangement under this section is a reviewable decision (see Part 2 of Chapter 11).

*Secretary may direct that activities not be carried out*

- (2) If the Secretary revokes an approved arrangement under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in

Section 181

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relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (3) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

**181 Notice of revocation**

- (1) If the Secretary decides to revoke an approved arrangement under this Division, the Secretary must give the holder of the approved arrangement a written notice stating the following:
- (a) that the approved arrangement is to be revoked;
  - (b) the reasons for the revocation;
  - (c) the date the revocation is to take effect.

Note: The notice must also state the matters referred to in section 382.

- (2) If the holder of the approved arrangement was given a notice (a ***show cause notice***) under subsection 179(2) that included the request referred to in paragraph 179(3)(b), the revocation must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

## **Division 3—Other provisions**

### **182 Export operations must not be carried out after approved arrangement revoked**

- (1) A person contravenes this subsection if:
- (a) the person was the holder of an approved arrangement; and
  - (b) the person was given notice of revocation of the approved arrangement under subsection 178(3) or 181(1); and
  - (c) export operations that were covered by the approved arrangement were carried out after the revocation took effect.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

### **183 Secretary may require action to be taken after approved arrangement revoked**

- (1) This section applies if:
- (a) a person was given notice of revocation of an approved arrangement under subsection 178(3) or 181(1); or
  - (b) the approved arrangement was revoked under Division 1 or 2.

**Section 183**

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- (2) The Secretary may, in writing, direct the person to take specified action, within a specified period after the approved arrangement is revoked, in relation to the export operations and goods that were covered by the approved arrangement. The action must be action that is necessary for the purpose of achieving one or more objects of this Act.
- (3) A direction to a person under subsection (2) must state that, if the person fails to comply with the direction, the person could commit an offence or be liable to a civil penalty.

Note: See also section 309 (general provisions relating to directions).

- (4) A person who is given a direction under subsection (2) must comply with the direction.

*Fault-based offence*

- (5) A person commits an offence if:
- (a) the person is given a direction under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

## **Part 7—Obligations of holders of approved arrangements**

### **184 Conditions of approved arrangement must not be contravened**

#### *Approved arrangement that is not suspended*

- (1) A person contravenes this subsection if:
- (a) the person is the holder of an approved arrangement; and
  - (b) the approved arrangement, or a part of the approved arrangement, is not suspended under Part 5; and
  - (c) a condition of the approved arrangement is contravened.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

#### *Approved arrangement that is suspended*

- (5) A person contravenes this subsection if:
- (a) the person is the holder of an approved arrangement; and

Section 185

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- (b) the approved arrangement, or a part of the approved arrangement, is suspended under Part 5; and
- (c) a condition of the approved arrangement is contravened; and
- (d) the condition is required to be complied with during the period of the suspension.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 370).

*Fault-based offence*

- (6) A person commits an offence if the person contravenes subsection (5).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

- (7) For the purposes of subsection (6), strict liability applies to paragraphs (5)(c) and (d).

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 960 penalty units.

**185 Additional or corrected information in relation to application to approve proposed arrangement etc.**

- (1) The holder of an approved arrangement must comply with subsection (2) if:
  - (a) the holder becomes aware that information included in an application made by the holder under this Chapter, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The holder of the approved arrangement must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing whether:



- (a) the requirements of this Act in relation to a matter covered by the approved arrangement have been, are being, or will be complied with; or
- (b) importing country requirements relating to a matter covered by the approved arrangement have been, are being, or will be met.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: The Secretary may suspend or revoke the approved arrangement if the holder fails to comply with this subsection (see paragraphs 171(1)(k) and 179(1)(k)).

Note 3: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
  - (a) the person is required to give information to the Secretary under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**186 Notice of changes to holder of approved arrangement**

- (1) The holder of an approved arrangement must notify the Secretary, in writing, as soon as practicable after any of the following events occurs:
  - (a) there is a change in the holder's business structure;
  - (b) if the holder is an individual—the individual enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
  - (c) if the holder is a corporation—the corporation:
    - (i) enters into administration (within the meaning of section 435C of the *Corporations Act 2001*); or

Section 187

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- (ii) is to be wound up (whether by a court or voluntarily);
- (d) there is a change in the trading name, business address or contact details of the holder;
- (e) any other event prescribed by the rules.

Example: For the purposes of paragraph (a), each of the following would be a change in the holder's business structure:

- (a) a change in a person who manages or controls export operations covered by the approved arrangement;
- (b) if the holder is a partnership—a change in the membership of the partnership.

Note: The Secretary may suspend or revoke the approved arrangement if:

- (a) in certain cases, the holder is not a fit and proper person (see paragraphs 171(1)(b) and 179(1)(b)); or
- (b) the holder fails to comply with this section (see paragraphs 171(1)(k) and 179(1)(k)).

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
  - (a) the person is required to notify the Secretary of an event in accordance with subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**187 Notification of conviction of serious offence**

- (1) This section applies to the following persons:
  - (a) an applicant for approval of a proposed arrangement under section 150, and any other person who is to manage or control or carry out export operations in accordance with the proposed arrangement;
  - (b) the holder of an approved arrangement, and any other person who manages or controls or carries out export operations covered by the approved arrangement;if the person is not a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter.

- (2) If a person to whom this section applies is convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Secretary, in writing, of the conviction or order as soon as practicable after the person is convicted or the order is made.

Note 1: If a person referred to in paragraph (1)(a) or (b) is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter, the person is required to notify the Secretary of certain matters under subsection 374(5).

Note 2: If this section applies to the holder of an approved arrangement and the holder fails to comply with this subsection, the Secretary may suspend or revoke the approved arrangement (see paragraphs 171(1)(k) and 179(1)(k)).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary of a conviction or order under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**188 Notice of person ceasing to operate business etc. covered by approved arrangement**

- (1) If the person (the *former holder*) who was the holder of an approved arrangement ceases:
- (a) to operate the business that carries out export operations covered by the approved arrangement; or
  - (b) to manage or control export operations covered by the approved arrangement;
- the former holder must, as soon as practicable after so ceasing, notify the Secretary, in writing, of that fact. The notice must also include contact details for the former holder.

Section 188

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- (2) The approved arrangement is taken to have been revoked at the earlier of the following:
- (a) the end of the day a notice under subsection (1) is received by the Secretary;
  - (b) the end of the seventh day after the day the former holder ceased:
    - (i) to operate the business that carries out export operations covered by the approved arrangement; or
    - (ii) to manage or control export operations covered by the approved arrangement.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary under subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

## **Chapter 6—Export licences**

### **Part 1—Introduction**

#### **189 Simplified outline of this Chapter**

The Secretary may, on application by a person, grant the person an export licence to carry out a kind of export operations in relation to a kind of prescribed goods.

An export licence may be granted to carry out more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places.

An export licence is subject to certain conditions.

An export licence may remain in force indefinitely or may cease to be in force on an expiry date.

If there is an expiry date for an export licence, the export licence may be renewed.

The matters covered by an export licence or the conditions of the export licence may be varied.

An export licence may be suspended wholly or in part, and may be revoked.

A show cause notice must be given to the holder of an export licence before the licence may be varied, suspended or revoked (except in serious and urgent cases or if the holder has requested the variation, suspension or revocation).

The Secretary may give directions to the holder of an export licence, including prohibiting a kind of export operations being

Section 189

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carried out in relation to a kind of prescribed goods in certain circumstances.

The holder of an export licence must comply with certain obligations.

## **Part 2—Grant of export licence**

### **190 Application for export licence**

- (1) A person may apply to the Secretary for an export licence to carry out a kind of export operations in relation to a kind of prescribed goods.
- (2) An application:
  - (a) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
  - (b) may, but is not required to, specify one or more places to which the goods are to be exported.

Note 1: The export of a kind of prescribed goods may be prohibited unless the exporter holds an export licence that covers the export of goods of that kind (see section 29 and rules made for the purposes of that section).

Note 2: Section 377 sets out requirements for applications.

### **191 Secretary must decide whether to grant export licence**

- (1) On receiving an application under section 190 for an export licence, the Secretary must decide:
  - (a) to grant the applicant an export licence; or
  - (b) to refuse to grant the applicant an export licence.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is for an export licence to carry out more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to grant the applicant an export licence to carry out some or all of those kinds of export operations in relation to some or all of those kinds of goods for export to some or all of those places.

Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

**Section 191**

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Note 4: A decision to refuse to grant an export licence to carry out a kind of export operations in relation to a kind of prescribed goods is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may grant the applicant an export licence if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following requirements are met:
- (a) if the applicant is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the applicant is a fit and proper person;
  - (b) either:
    - (i) all relevant Commonwealth liabilities of the applicant have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the applicant have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;
  - (c) the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if granted, would be subject;
  - (d) any other requirement prescribed by the rules.

Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

- (3) If the Secretary grants the applicant an export licence, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the licence.

Note 1: If there is no expiry date for the export licence, the licence remains in force unless it is revoked (see subsection 194(1)).

Note 2: A decision to set an expiry date for an export licence is a reviewable decision (see Part 2 of Chapter 11).



- (4) The Secretary may set an expiry date for the export licence under subsection (3) even if rules made for the purposes of subsection 194(5) apply in relation to the licence.

## **192 Conditions of export licence**

- (1) An export licence is subject to:
- (a) the conditions provided by this Act; and
  - (b) the conditions prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the licence); and
  - (c) any additional conditions that the Secretary considers appropriate and that are specified in the licence.

Note 1: See subsection 222(4) for a condition of an export licence.

Note 2: The holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 217).

Note 3: An export licence may be suspended or revoked if a condition of the licence is contravened (see sections 205 and 212).

Note 4: A decision to grant an export licence subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

Note 5: Part 7 sets out additional obligations of the holder of an export licence.

- (2) Without limiting paragraph (1)(b), the rules may prescribe conditions in relation to any or all of the following:
- (a) the holder of the export licence;
  - (b) a kind of export operations;
  - (c) a kind of prescribed goods;
  - (d) importing country requirements relating to a kind of export operations or a kind of prescribed goods.
- (3) Without limiting paragraph (1)(b) or (c), the rules may prescribe conditions, and the Secretary may impose conditions, that are required to be complied with before or after the export of the goods to which the conditions relate.

Section 193

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- (4) For the purposes of this Act, conditions to which an export licence is subject under subsection (1) or section 197 are conditions of the licence.

**193 Matters to be stated in export licence**

- (1) An export licence must:
- (a) be in writing; and
  - (b) be given to the applicant to whom it was granted.
- (2) An export licence must state the following information:
- (a) the number allocated to the licence;
  - (b) each kind of export operations and each kind of prescribed goods covered by the licence;
  - (c) if applicable, each place to which a kind of prescribed goods covered by the licence may be exported;
  - (d) the date the licence takes effect;
  - (e) that the licence remains in force indefinitely or the expiry date for the licence;
  - (f) any conditions prescribed by the rules that the Secretary has decided are not to be conditions of the licence;
  - (g) any additional conditions of the licence;
  - (h) any other information prescribed by the rules.

**194 Period of effect of export licence**

*Export licences that have no expiry date*

- (1) If there is no expiry date for an export licence, the licence remains in force unless it is revoked under Part 6.

*Export licences that have an expiry date*

- (2) If there is an expiry date for an export licence (including an export licence that has been renewed under Part 3), the licence remains in force until the end of that expiry date unless:
- (a) the licence is renewed under Part 3 on or before that date; or

- (b) the licence is revoked under Part 6 on or before that date.
- (3) There is an expiry date for an export licence if:
  - (a) rules made for the purposes of subsection (5) apply in relation to the export licence; or
  - (b) an expiry date for the export licence set under subsection 191(3) or 196(3) or paragraph 201(1)(c) or (d) is in force in relation to the export licence.
- (4) The *expiry date* for an export licence is:
  - (a) if rules made for the purposes of subsection (5) apply in relation to the export licence and no expiry date set under subsection 191(3) or 196(3) or paragraph 201(1)(c) or (d) is in force in relation to the export licence—the last day of the period prescribed by the rules; or
  - (b) if an expiry date for the export licence set under subsection 191(3) or 196(3) or paragraph 201(1)(c) or (d) is in force in relation to the export licence—that date.

*Rules may prescribe period of effect of export licence*

- (5) The rules may prescribe the period during which an export licence remains in force. The rules may apply in relation to:
  - (a) export licences generally; or
  - (b) export licences for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

## **Part 3—Renewal of export licence**

### **195 Application to renew export licence**

- (1) This section applies in relation to an export licence (including a licence that is suspended wholly or in part under Part 5) if there is an expiry date for the licence.

Note: See subsections 194(3) and (4) in relation to the expiry date for an export licence.

- (2) The holder of the export licence may apply to the Secretary to renew the licence.

Note: Section 377 sets out requirements for applications.

- (3) An application for renewal:

- (a) may relate to more than one kind of export operations and more than one kind of prescribed goods; and
- (b) may, but is not required to, specify one or more places to which the goods are to be exported.

- (4) An application for renewal must be made:

- (a) within the period prescribed by the rules; or
- (b) if the Secretary allows a longer period—within that longer period.

- (5) If an application to renew an export licence is made after the period applying under subsection (4):

- (a) the application is taken to be an application for a new export licence; and
- (b) Part 2 applies in relation to the application; and
- (c) the other provisions of this Part do not apply in relation to the application.

## **196 Secretary must decide whether to renew export licence**

- (1) On receiving an application under section 195 to renew an export licence, the Secretary must decide:
- (a) to renew the licence; or
  - (b) to refuse to renew the licence.

Note 1: See section 379 for matters relating to dealing with applications.

Note 2: If the application is to renew the export licence to carry out more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to renew the licence to carry out some or all of those kinds of export operations in relation to some or all of those kinds of goods for export to some or all of those places.

Note 3: If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).

Note 4: A decision to refuse to renew an export licence to carry out a kind of export operations in relation to a kind of prescribed goods is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (2) The Secretary may refuse to renew the export licence if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:
- (a) if the holder of the licence is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is a fit and proper person;
  - (b) either:
    - (i) all relevant Commonwealth liabilities of the holder of the licence have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the holder have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances;

Section 197

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- (c) the holder of the licence has complied with the requirements of this Act in relation to the export operations and prescribed goods covered by the licence;
- (d) the conditions of the licence have been, and are being, complied with;
- (e) any other requirement prescribed by the rules is met.

Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

- (3) If the Secretary renews the export licence, the Secretary may, if the Secretary considers it appropriate, set an expiry date for the licence.

Note 1: If there is no expiry date for the export licence, the licence remains in force unless it is revoked (see subsection 194(1)).

Note 2: A decision to set an expiry date for a renewed export licence is a reviewable decision (see Part 2 of Chapter 11).

- (4) The Secretary may set an expiry date for the export licence under subsection (3) even if rules made for the purposes of subsection 194(5) apply in relation to the licence.

**197 Conditions of renewed export licence**

- (1) If the Secretary renews an export licence, the renewed licence is subject to:
  - (a) the conditions provided by this Act; and
  - (b) the conditions prescribed by rules made for the purposes of paragraph 192(1)(b) (other than any of those conditions that the Secretary decides are not to be conditions of the licence); and
  - (c) any additional conditions that the Secretary considers appropriate and that are specified in the licence.

Note 1: See subsection 222(4) for a condition of an export licence.

Note 2: The holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 217).

Section 198

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Note 3: An export licence may be suspended or revoked if a condition of the licence is contravened (see sections 205 and 212).

Note 4: A decision to renew an export licence subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

Note 5: Part 7 sets out additional obligations of the holder of an export licence.

- (2) Without limiting paragraph (1)(c), the Secretary may impose conditions that are required to be complied with before or after the export of the goods to which the conditions relate.

**198 Matters to be stated in renewed export licence**

If an export licence is renewed, the Secretary must give the applicant a new export licence stating the information referred to in subsection 193(2).

## **Part 4—Variation of export licence**

### **Division 1—Application by holder**

#### **199 Application by holder for variation of export licence**

- (1) The holder of an export licence may apply to the Secretary:
- (a) to vary the licence in relation to any of the following matters (including by adding or removing any of those matters):
    - (i) kinds of export operations;
    - (ii) kinds of prescribed goods;
    - (iii) if applicable, places to which goods may be exported; or
  - (b) to vary the conditions of the licence; or
  - (c) to vary the licence to make a minor change to a matter stated in the licence (including to correct a minor or technical error); or
  - (d) to vary any other aspect of the licence.

**Example:** For the purposes of paragraph (d), a variation may be needed to change the name of a person who participates, or will participate, in the management or control of the holder's export business.

**Note:** Section 377 sets out requirements for applications. A single application may be made to make a variation in relation to an export licence and to renew the licence.

- (2) If the Secretary receives an application under subsection (1) to make a variation, the Secretary must decide:
- (a) to make the variation; or
  - (b) to refuse to make the variation.

**Note 1:** See section 379 for matters relating to dealing with applications.

**Note 2:** If the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period (see subsection 379(2)).



Note 3: A decision to refuse the application is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

- (3) The Secretary may make the variation if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that:
- (a) either:
    - (i) all relevant Commonwealth liabilities of the applicant have been paid or are taken to have been paid; or
    - (ii) if one or more relevant Commonwealth liabilities of the applicant have not been paid or are not taken to have been paid—the non-payment is due to exceptional circumstances; and
  - (b) the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if varied, would be subject; and
  - (c) any other requirement prescribed by the rules is met.

Note: For the purposes of paragraph (3)(a), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 431).

## **200 Notice of variation**

- (1) If the Secretary makes a variation in relation to an export licence under paragraph 199(2)(a), the Secretary must give the holder of the licence written notice of the variation.
- (2) The notice must state the following:
  - (a) details of the variation;
  - (b) if the variation is of the conditions of the export licence—the varied conditions;
  - (c) the date the variation takes effect;
  - (d) any other information prescribed by the rules.
- (3) If the export licence needs to be changed to take account of the variation, the Secretary must, within 7 days after making the

**Chapter 6** Export licences  
**Part 4** Variation of export licence  
**Division 1** Application by holder

**Section 200**

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variation, give the holder of the licence a new export licence including the variation.

Note: The export licence, as varied, remains in force as provided by section 194.

## **Division 2—Variation by Secretary**

### **201 Secretary may make variations in relation to export licence**

- (1) The Secretary may do any of the following in relation to an export licence:
- (a) vary any aspect of the licence, including so that it does not cover:
    - (i) a kind of export operations; or
    - (ii) a kind of prescribed goods; or
    - (iii) if applicable, a place to which goods may be exported;
  - (b) vary the conditions of the licence (including by imposing new conditions);
  - (c) if there is no expiry date for the licence—vary the licence by setting an expiry date for the licence;
  - (d) if there is an expiry date for the licence (whether under paragraph 194(4)(a) or (b))—vary the licence by setting a different expiry date for the licence;
  - (e) if there is an expiry date for the licence under paragraph 194(4)(b)—vary the licence by revoking that expiry date.

Note 1: If the Secretary revokes the expiry date for the export licence under paragraph (e), the licence will remain in force:

- (a) if rules made for the purposes of subsection 194(5) apply in relation to the licence—for the period prescribed by the rules; or
- (b) if there are no such rules—indefinitely (unless it is revoked).

Note 2: Certain decisions under subsection (1) are reviewable decisions (see Part 2 of Chapter 11).

- (2) The Secretary may make a variation in relation to an export licence under paragraph (1)(a), (b) or (c), or set an earlier expiry date for the licence under paragraph (1)(d), only if the Secretary reasonably believes that:
- (a) the integrity of a kind of prescribed goods covered by the licence cannot be ensured; or
  - (b) it is necessary to do so to ensure:

Section 201

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- (i) compliance with the requirements of this Act in relation to the export operations and prescribed goods covered by the licence; or
- (ii) that importing country requirements relating to the export operations and prescribed goods covered by the licence are, or will be, met; or
- (c) if the holder of the licence is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is not a fit and proper person; or
- (d) a condition of the licence has been, or is being, contravened; or
- (e) it is necessary to do so:
  - (i) to take account of an event notified under section 219; or
  - (ii) to correct a minor or technical error; or
- (f) the licence needs to be varied for any other reason prescribed by the rules.

*Notice of certain proposed variations*

- (3) The Secretary must not make a variation in relation to an export licence under paragraph (1)(a), (b) or (c), or set an earlier expiry date for the licence under paragraph (1)(d), unless the Secretary has given a written notice to the holder of the licence in accordance with subsection (4).
- (4) A notice under subsection (3) must:
  - (a) specify each proposed variation; and
  - (b) specify the grounds for each proposed variation; and
  - (c) subject to subsection (5), request the holder of the export licence to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
  - (d) include a statement setting out the holder's right to seek review of a decision to make the proposed variation.

- (5) A notice under subsection (3) is not required to include the request referred to in paragraph (4)(c) if the Secretary reasonably believes that the grounds for the proposed variation are serious and urgent.

## 202 Notice of variation

- (1) If the Secretary makes a variation in relation to an export licence under subsection 201(1), the Secretary must give the holder of the licence written notice of the variation.
- (2) The notice must state the following:
- (a) details of the variation;
  - (b) if the variation is of the conditions of the export licence—the varied conditions and any new conditions;
  - (c) if the variation affects the period of effect of the licence:
    - (i) the expiry date for the licence under paragraph 194(4)(a) or (b) (whichever applies); or
    - (ii) if there is no expiry date for the licence—that the licence remains in force unless it is revoked;
  - (d) the date the variation takes effect;
  - (e) any other information prescribed by the rules.
- (3) If the holder was given a notice (a *show cause notice*) under subsection 201(3) that included the request referred to in paragraph 201(4)(c), the variation must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.
- (4) If the export licence needs to be changed to take account of the variation, the Secretary must, within 7 days after making the variation, give the holder of the licence a new export licence including the variation.

Note: The export licence, as varied, remains in force as provided by section 194.

## **Part 5—Suspension of export licence**

### **Division 1—Suspension requested by holder**

#### **203 Holder may request suspension**

- (1) Subject to subsection (2), the holder of an export licence may request the Secretary to suspend the licence in relation to a kind of export operations and a kind of prescribed goods and, if applicable, a place to which goods may be exported.
- (2) A request may be made under subsection (1) only in the circumstances prescribed by the rules.
- (3) A request under subsection (1) may relate to more than one kind of export operations or more than one kind of prescribed goods and, if applicable, more than one place.
- (4) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) state each kind of export operations and each kind of prescribed goods and, if applicable, each place, in relation to which the licence is to be suspended; and
  - (c) state the reason for the suspension; and
  - (d) include any other information prescribed by the rules.
- (5) If the Secretary receives a request from the holder of an export licence under subsection (1), the Secretary must, by written notice to the holder, suspend the licence as requested, with effect on the day specified in the notice.

#### **204 Request to revoke suspension**

- (1) If an export licence is suspended under section 203, the holder of the licence may request the Secretary to revoke the suspension.
  - (2) A request under subsection (1) must:
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- (a) be in writing; and
  - (b) state the reason for the request; and
  - (c) include any other information prescribed by the rules.
- (3) If the Secretary receives a request from the holder of an export licence under subsection (1), the Secretary may:
- (a) if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked—revoke the suspension by written notice to the holder; or
  - (b) in any other case:
    - (i) suspend the licence under Division 2 of this Part; or
    - (ii) revoke the licence under Division 2 of Part 6.

Note: A decision to suspend or revoke the export licence is a reviewable decision (see Part 2 of Chapter 11).

## **Division 2—Suspension by Secretary**

### **205 Grounds for suspension—general**

- (1) The Secretary may suspend an export licence in relation to one or more kinds of export operations and one or more kinds of prescribed goods and, if applicable, one or more places to which goods may be exported, if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the licence cannot be ensured;
  - (b) if the holder of the licence is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is not a fit and proper person;
  - (c) a requirement referred to in subsection 191(2) is no longer met;
  - (d) a condition of the licence has been, or is being, contravened;
  - (e) the holder of the licence:
    - (i) failed to comply with a direction given to the holder by an authorised officer or the Secretary; or
    - (ii) failed to comply with a request by an authorised officer to provide information or a document; or
    - (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
    - (iv) failed to comply with a request made by an auditor under section 272;
  - (f) the holder of the licence has engaged in conduct that:
    - (i) intimidated a person performing functions or exercising powers under this Act; or
    - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
  - (g) the holder of the licence or any other person who participates in the management or control of the holder's export business (as provided by section 220):



- (i) made a false, misleading or incomplete statement in an application under this Chapter; or
- (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
- (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (h) the holder of the licence is or was an associate of a person referred to in paragraph 221(1)(a), (b), (c) or (d);
- (i) the holder of the licence has contravened a requirement of this Act in relation to the licence;
- (j) a ground prescribed by the rules exists.

Note 1: A suspension must not be for more than 12 months (see section 208).

Note 2: A decision to suspend an export licence under this section is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed suspension*

- (2) The Secretary must not suspend an export licence under subsection (1) unless the Secretary has given a written notice to the holder of the licence in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify each kind of export operations and each kind of prescribed goods and, if applicable, each place, in relation to which the export licence is proposed to be suspended; and
  - (b) specify the grounds for the proposed suspension; and
  - (c) subject to subsection (4), request the holder of the export licence to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the licence should not be suspended as proposed; and
  - (d) include a statement setting out the holder's right to seek review of a decision to suspend the licence as proposed.

Section 206

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- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(c) if the Secretary reasonably believes that the grounds for the suspension are serious and urgent.

**206 Grounds for suspension—overdue relevant Commonwealth liability**

*Notice of proposed suspension*

- (1) The Secretary may suspend an export licence in relation to all kinds of export operations and all kinds of prescribed goods if:
- (a) a relevant Commonwealth liability of the holder of the licence (the *debtor*) is more than 30 days overdue; and
  - (b) the Secretary has given a written notice to the debtor in accordance with subsection (2); and
  - (c) within 8 days after the notice is given:
    - (i) the relevant Commonwealth liability has not been paid; or
    - (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Note 1: A suspension must not be for more than 12 months (see section 208).

Note 2: A decision to suspend an export licence under this section is a reviewable decision (see Part 2 of Chapter 11).

Note 3: If the Secretary suspends an export licence under this section, the Secretary may revoke the export licence in certain circumstances (see section 213).

- (2) A notice under subsection (1) must:
- (a) state that a relevant Commonwealth liability of the debtor in relation to an export licence is more than 30 days overdue; and
  - (b) state that the Secretary may suspend the export licence in relation to all kinds of export operations and all kinds of prescribed goods if, within 8 days after the notice is given:
    - (i) the relevant Commonwealth liability is not paid; or

- (ii) the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability;  
and
- (c) include a statement setting out the debtor's right to seek review of a decision to suspend the export licence.

*Secretary may direct that activities not be carried out*

- (3) If the Secretary suspends an export licence under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (4) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

## **207 Notice of suspension**

- (1) If the Secretary decides to suspend an export licence under this Division, the Secretary must give the holder of the licence a written notice stating the following:
  - (a) that the export licence is to be suspended, for the period specified in the notice, in relation to all or specified kinds of export operations and all or specified kinds of prescribed goods and, if applicable, all or specified places to which goods may be exported;
  - (b) the reasons for the suspension;
  - (c) the date the suspension is to start;
  - (d) the period of the suspension.

Note: The notice must also state the matters referred to in section 382.

- (2) If the holder of the export licence was given a notice (a ***show cause notice***) under subsection 205(2) that included the request referred

Section 208

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to in paragraph 205(3)(c), the suspension must not start before the earlier of the following:

- (a) the day after any response to the request is received by the Secretary;
- (b) the end of 14 days after the show cause notice was given.

**208 Period of suspension**

- (1) A suspension of an export licence under this Division must not be for more than 12 months.
- (2) The Secretary may vary the period of a suspension of an export licence under this Division by written notice to the holder of the licence. However, the total period of a suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension is a reviewable decision (see Part 2 of Chapter 11).

**209 Revocation of suspension**

The Secretary may revoke a suspension of an export licence under this Division by written notice to the holder of the licence.

## **Division 3—Other provisions**

### **210 Effect of suspension**

- (1) If an export licence is suspended wholly or in part under Division 1 or 2:
  - (a) the licence remains in force while it is suspended; and
  - (b) subject to rules made for the purposes of subsection (2), the requirements of this Act in relation to the licence (including the conditions of the licence) must be complied with while the licence is suspended.
- (2) The rules may prescribe requirements of this Act (including conditions of an export licence) that are not required to be complied with during any period when the licence is suspended.

## **Part 6—Revocation of export licence**

### **Division 1—Revocation requested by holder**

#### **211 Holder may request revocation**

- (1) The holder of an export licence (including a licence that is suspended wholly or in part under Part 5) may request the Secretary to revoke the licence.

Note: If the holder does not wish to revoke the export licence in relation to all kinds of export operations and all kinds of prescribed goods, the holder may apply to vary the licence under Division 1 of Part 4.

- (2) A request under subsection (1) must:
- (a) be in writing; and
  - (b) include the information (if any) prescribed by the rules.
- (3) If the Secretary receives a request from the holder of an export licence under subsection (1), the Secretary must, by written notice to the holder, revoke the licence with effect on the day specified in the notice.
- (4) Subsection (3) does not apply if, before the request under subsection (1) was made, the Secretary:
- (a) had given the holder of the export licence a notice under subsection 212(2) in relation to the licence; and
  - (b) had not decided whether to revoke the licence or not.

## **Division 2—Revocation by Secretary**

### **212 Grounds for revocation—general**

- (1) The Secretary may revoke an export licence (including a licence that is suspended wholly or in part under Part 5) if the Secretary reasonably believes any of the following:
- (a) the integrity of a kind of prescribed goods covered by the licence cannot be ensured;
  - (b) if the holder of the licence is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of this Chapter—the holder is not a fit and proper person;
  - (c) a requirement referred to in subsection 191(2) is no longer met;
  - (d) a condition of the licence has been, or is being, contravened;
  - (e) the holder of the licence:
    - (i) failed to comply with a direction given to the holder by an authorised officer or the Secretary; or
    - (ii) failed to comply with a request by an authorised officer to provide information or a document; or
    - (iii) failed to provide facilities and assistance to an auditor as required by section 271; or
    - (iv) failed to comply with a request made by an auditor under section 272;
  - (f) the holder of the licence has engaged in conduct that:
    - (i) intimidated a person performing functions or exercising powers under this Act; or
    - (ii) hindered or prevented a person from performing functions or exercising powers under this Act;
  - (g) the holder of the licence or any other person who participates in the management or control of the holder's export business (as provided by section 220):
    - (i) made a false, misleading or incomplete statement in an application under this Chapter; or
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**Section 213**

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- (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or
- (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- (h) the holder of the licence is or was an associate of a person referred to in paragraph 221(1)(a), (b), (c) or (d);
- (i) the holder of the licence has contravened a requirement of this Act in relation to the licence;
- (j) a ground prescribed by the rules exists.

Note: A decision to revoke an export licence under this section is a reviewable decision (see Part 2 of Chapter 11).

*Notice of proposed revocation*

- (2) The Secretary must not revoke an export licence under subsection (1) unless the Secretary has given a written notice to the holder of the licence in accordance with subsection (3).
- (3) A notice under subsection (2) must:
  - (a) specify the grounds for the proposed revocation; and
  - (b) subject to subsection (4), request the holder of the export licence to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the licence should not be revoked; and
  - (c) include a statement setting out the holder's right to seek review of a decision to revoke the licence.
- (4) A notice under subsection (2) is not required to include the request referred to in paragraph (3)(b) if the Secretary reasonably believes that the grounds for the revocation are serious and urgent.

**213 Grounds for revocation—overdue relevant Commonwealth liability**

- (1) The Secretary may revoke an export licence if:
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- (a) the licence is suspended under subsection 206(1) for non-payment of a relevant Commonwealth liability; and
- (b) within 90 days after the start of the suspension:
  - (i) the relevant Commonwealth liability had not been paid; or
  - (ii) the person (the *debtor*) who is liable to pay the relevant Commonwealth liability had not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Note: A decision to revoke an export licence under this section is a reviewable decision (see Part 2 of Chapter 11).

*Secretary may direct that activities not be carried out*

- (2) If the Secretary revokes an export licence under subsection (1), the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 309 (general provisions relating to directions).

*Action under this section does not affect liability to pay relevant Commonwealth liability*

- (3) Action by the Secretary under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

## **214 Notice of revocation**

- (1) If the Secretary decides to revoke an export licence under this Division, the Secretary must give the holder of the licence a written notice stating the following:
  - (a) that the licence is to be revoked;
  - (b) the reasons for the revocation;
  - (c) the date the revocation is to take effect.

Note: The notice must also state the matters referred to in section 382.

Section 214

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- (2) If the holder of the export licence was given a notice (a *show cause notice*) under subsection 212(2) that included the request referred to in paragraph 212(3)(b), the revocation must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.

## **Division 3—Other provisions**

### **215 Export operations must not be carried out after export licence revoked**

- (1) A person contravenes this subsection if:
  - (a) the person was the holder of an export licence; and
  - (b) the person was given notice of revocation of the licence under subsection 211(3) or 214(1); and
  - (c) export operations that were covered by the licence were carried out after the revocation took effect.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

### **216 Secretary may require action to be taken after export licence revoked**

- (1) This section applies if:
  - (a) a person was given notice of revocation of an export licence under subsection 211(3) or 214(1); or
  - (b) the export licence was revoked under Division 1 or 2.

Section 216

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- (2) The Secretary may, in writing, direct the person to take specified action, within a specified period after the export licence is revoked, in relation to the export operations and prescribed goods that were covered by the licence. The action must be action that is necessary for the purpose of achieving one or more objects of this Act.
- (3) A direction to a person under subsection (2) must state that the person could commit an offence or be liable to a civil penalty if the person fails to comply with the direction.

Note: See also section 309 (general provisions relating to directions).

- (4) A person who is given a direction under subsection (2) must comply with the direction.

*Fault-based offence*

- (5) A person commits an offence if:
- (a) the person is given a direction under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

## **Part 7—Obligations of holders of export licences**

### **217 Conditions of export licence must not be contravened**

#### *Export licence that is not suspended*

- (1) A person contravenes this subsection if:
- (a) the person is the holder of an export licence; and
  - (b) the licence is not suspended wholly or in part under Part 5; and
  - (c) a condition of the licence is contravened.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

#### Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(c).

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

#### Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or

Section 217

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- (b) if the person is a body corporate—the amount under section 50A.

*Export licence that is suspended*

- (5) A person contravenes this subsection if:
  - (a) the person is the holder of an export licence; and
  - (b) the licence is suspended wholly or in part under Part 5; and
  - (c) a condition of the licence is contravened; and
  - (d) the condition is required to be complied with during the period of the suspension.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 370).

*Fault-based offence*

- (6) A person commits an offence if the person contravenes subsection (5).

Penalty:

- (a) if the person is an individual—imprisonment for 10 years or 2,000 penalty units, or both; or
  - (b) if the person is a body corporate—the amount under section 50A.
- (7) For the purposes of subsection (6), strict liability applies to paragraphs (5)(c) and (d).

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty:

- (a) if the person is an individual—4,000 penalty units; or
- (b) if the person is a body corporate—the amount under section 50A.

**218 Additional or corrected information in relation to application for licence etc.**

- (1) The holder of an export licence must comply with subsection (2) if:
  - (a) the holder becomes aware that information included in an application made by the holder under this Chapter, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The holder of the export licence must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing whether:
  - (a) the requirements of this Act in relation to a matter covered by the licence have been, are being, or will be complied with; or
  - (b) importing country requirements relating to a matter covered by the licence have been, are being, or will be met.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: The Secretary may suspend or revoke the export licence if the holder fails to comply with this subsection (see paragraphs 205(1)(i) and 212(1)(i)).

Note 3: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
  - (a) the person is required to give information to the Secretary under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

Section 219

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**219 Notice of changes to holder of export licence**

- (1) The holder of an export licence must notify the Secretary, in writing, as soon as practicable after any of the following events occurs:
- (a) there is a change in the holder's business structure;
  - (b) if the holder is an individual—the individual enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
  - (c) if the holder is a corporation—the corporation:
    - (i) enters into administration (within the meaning of section 435C of the *Corporations Act 2001*); or
    - (ii) is to be wound up (whether by a court or voluntarily);
  - (d) there is a change in the trading name, business address or contact details of the holder;
  - (e) any other event prescribed by the rules.

Example: For the purposes of paragraph (a), each of the following would be a change in the holder's business structure:

- (a) a change in a person who participates in the management or control of the holder's export business;
- (b) if the holder is a partnership—a change in the membership of the partnership.

Note: The Secretary may suspend or revoke the export licence if:

- (a) in certain cases, the holder of the licence is not a fit and proper person (see paragraphs 205(1)(b) and 212(1)(b)); or
- (b) the holder fails to comply with this subsection (see paragraphs 205(1)(i) and 212(1)(i)).

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary of an event in accordance with subsection (1); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.



## Part 8—Other matters

### 220 Persons who participate in the management or control of another person's export business

- (1) For the purposes of this Chapter, a person (the *first person*) is taken to be a person who participates or would participate in the management or control of an export business or proposed export business of another person if:
  - (a) the first person has, or would have, authority to direct the export operations, or an important or substantial part of the export operations, carried out, or to be carried out, by or in connection with the other person's export business or proposed export business; or
  - (b) the first person has, or would have, authority to direct another person who has, or would have, authority of the kind referred to in paragraph (a) in the exercise of that authority or proposed authority.
- (2) If:
  - (a) a corporation (the *first corporation*) has applied for, or is the holder of, an export licence; and
  - (b) a corporation (the *related corporation*) that is related to the first corporation proposes to carry out, or carries out, export operations in relation to a kind of prescribed goods to which the application relates or that are covered by the export licence; and
  - (c) the export operations are proposed to be carried out, or are carried out, wholly or partly, in connection with the export business, or proposed export business, of the first corporation;

the export operations are taken, for the purposes of this Chapter, to be export operations proposed to be carried out, or carried out, by the first corporation as part of its export business or proposed export business.

Section 221

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- (3) For the purposes of subsection (2), the question whether corporations are related to each other is to be determined in the same manner as that question would be determined under the *Corporations Act 2001*.

**221 Secretary's powers in relation to associates of holder of export licence**

- (1) This section applies if the Secretary:
- (a) refuses to grant an export licence to a person; or
  - (b) decides not to renew a person's export licence; or
  - (c) suspends a person's export licence (wholly or in part) under Division 2 of Part 5; or
  - (d) revokes a person's export licence under Division 2 of Part 6.
- (2) The Secretary may do either or both of the following, on one or more occasions:
- (a) refuse to grant an export licence to an associate of a person referred to in subsection (1);
  - (b) if an associate of a person referred to in subsection (1) is or becomes the holder of an export licence—give the associate a written notice in accordance with subsection (3).
- (3) A notice under paragraph (2)(b) must:
- (a) specify the grounds on which the notice is given; and
  - (b) request the associate to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why an export licence held by the associate:
    - (i) should not be suspended, or further suspended, under Division 2 of Part 5; or
    - (ii) should not be revoked under Division 2 of Part 6; and
  - (c) include a statement setting out the associate's right to seek review of a decision:
    - (i) to suspend, or further suspend, under Division 2 of Part 5 an export licence held by the associate; or
    - (ii) to revoke under Division 2 of Part 6 an export licence held by the associate.

## **222 Secretary may give directions to holder of export licence**

- (1) The Secretary may give written directions to the holder of an export licence.

Note 1: An authorised officer may also give a direction to the holder of the export licence (see section 305).

Note 2: See also section 309 (general provisions relating to directions).

- (2) Without limiting subsection (1), directions given under that subsection may:
- (a) prohibit (either absolutely or unless particular conditions are complied with) a kind of export operations being carried out in relation to a kind of prescribed goods by reference to any matter that the Secretary considers appropriate; or
  - (b) require the holder of the licence to obtain the approval of the Secretary before carrying out a kind of export operations in relation to a kind of prescribed goods; or
  - (c) require the holder of the licence to carry out specified activities in connection with a kind of export operations carried out in relation to a kind of prescribed goods; or
  - (d) require the holder of the licence to give the Secretary specified information or documents relating to a kind of export operations carried out in relation to a kind of prescribed goods; or
  - (e) require the holder of the licence to allow the Secretary, or a person with appropriate qualifications or expertise, to enter premises where a kind of export operations are being carried out in relation to a kind of prescribed goods covered by the licence; or
  - (f) do anything else prescribed by the rules.
- (3) In considering whether to give a direction under subsection (1), the Secretary must have regard to the matters prescribed by the rules.
- (4) An export licence is subject to the condition that the holder of the licence must comply with any directions given from time to time to the holder under this section.

Section 222

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Note: The holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 217).

- (5) If a direction given to the holder of an export licence under subsection (1) is inconsistent with the rules or a condition of the licence, the direction prevails and the rules or condition, to the extent of the inconsistency, do not have any effect.

## **Chapter 7—Export permits**

### **Part 1—Introduction**

#### **223 Simplified outline of this Chapter**

A person may apply to the Secretary for an export permit for a kind of prescribed goods. The Secretary, or in relation to certain kinds of prescribed goods, a nominated export permit issuer, must decide whether to issue the export permit. The Secretary may exercise certain powers in relation to an application for an export permit.

An export permit is subject to certain conditions.

An export permit must be issued in writing.

An export permit has effect for a particular period.

An export permit may be varied, suspended or revoked and may be required to be returned.

If an export permit is in force for a kind of prescribed goods, the Secretary may require an assessment of the goods to be carried out under Part 2 of Chapter 9.

A person who holds, or has applied for, an export permit must give the Secretary additional or corrected information in certain circumstances.

## Part 2—Issue of export permit

### 224 Application for export permit

- (1) A person may apply to the Secretary for an export permit for a kind of prescribed goods.
- (2) An application:
  - (a) may relate to more than one kind of prescribed goods; and
  - (b) may, but is not required to, specify one or more places to which the goods are to be exported.

Note 1: The export of a consignment of a kind of prescribed goods may be prohibited unless the exporter holds an export permit that authorises the export of the goods (see section 29 and rules made for the purposes of that section).

Note 2: Section 239 sets out requirements for applications.

### 225 Secretary must decide whether to issue export permit

- (1) If an application for an export permit is made under section 224, the Secretary must decide:
  - (a) to issue the permit; or
  - (b) to refuse to issue the permit.

Note 1: If the application is for an export permit for more than one kind of prescribed goods for export to more than one place, the Secretary may decide to issue an export permit for some or all of those kinds of goods for export to some or all of those places.

Note 2: A nominated export permit issuer may issue an export permit for certain kinds of prescribed goods in certain circumstances (see the definition of *nominated export permit issuer* in section 12 and paragraph 288(2)(c)).

Note 3: A decision in relation to the application may be made by the operation of a computer program (see section 286).

- (2) The Secretary may have regard to any matter the Secretary considers relevant in relation to the application, including the following:
- (a) whether the requirements of this Act have been complied with, or will be complied with before the goods to which the application relates are imported into the importing country;
  - (b) whether the importing country requirements relating to the goods to which the application relates have been met, or will be met before the goods are imported into the importing country.

Note: The Secretary may also exercise powers under section 241 in relation to the application.

- (3) If the Secretary decides not to issue the export permit, the Secretary must give the applicant written notice of the decision.

## **226 Requirements for export permit**

- (1) A unique number must be allocated to each export permit.
- (2) An export permit must be issued in writing (including if the decision to issue the export permit was made by the operation of a computer program under section 286).
- (3) An export permit must:
  - (a) state the number allocated to the permit under subsection (1); and
  - (b) include any other information prescribed by the rules.

## **227 Conditions of export permit**

- (1) An export permit is subject to:
  - (a) any conditions prescribed by the rules; and
  - (b) any additional conditions specified in a written notice given to the holder of the permit.

Note 1: An export permit may be revoked if conditions of the permit are contravened (see section 233).

**Section 228**

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Note 2: Conditions prescribed by rules made for the purposes of paragraph (a) may be varied by amending the rules. Any additional conditions of an export permit specified in a notice given under paragraph (b) may be varied by the Secretary under section 229.

- (2) Without limiting paragraph (1)(a) or (b), the rules may prescribe conditions, and the Secretary may impose conditions, that are required to be complied with before or after the export of the goods to which the export permit relates.
- (3) For the purposes of this Act, conditions to which an export permit is subject under subsection (1) are conditions of the permit.

*Fault-based offence*

- (4) A person commits an offence if:
  - (a) the person is the holder of an export permit that is in force; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes a condition of the permit.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if:
  - (a) the person is the holder of an export permit that is in force; and
  - (b) the person contravenes a condition of the permit.

Civil penalty: 240 penalty units.

**228 Period of effect of export permit**

An export permit:

- (a) takes effect when it is issued; and
- (b) remains in force as prescribed by the rules, unless it is revoked earlier under section 233.



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Section 228

Note: An export permit that is suspended under subsection 231(1) remains in force while it is suspended. However, while the permit is suspended, it does not authorise the export of the goods for which it was issued (see section 232).

## **Part 3—Variation, suspension and revocation of export permit**

### **229 Secretary may vary export permit or conditions of permit**

- (1) The Secretary may vary an export permit, or any conditions of an export permit specified under paragraph 227(1)(b) (including by imposing new conditions), only if:
- (a) the Secretary reasonably believes that circumstances prescribed by the rules exist; or
  - (b) the variation is necessary to correct a minor or technical error.

Note: Conditions of an export permit prescribed by rules made for the purposes of paragraph 227(1)(a) may be varied by amending the rules.

- (2) Conditions of an export permit that are varied under subsection (1) may be required to be complied with before or after the export of the goods to which the export permit relates.
- (3) The Secretary may vary an export permit, or conditions of the permit, under subsection (1):
- (a) on the Secretary's own initiative; or
  - (b) on application by the holder of the permit.

Note 1: Section 239 sets out requirements for applications.

Note 2: The Secretary may exercise powers under section 241 in relation to an application under paragraph (b) of this subsection.

- (4) If the Secretary varies an export permit under subsection (1), the Secretary must:
- (a) issue the varied permit to the holder of the permit; and
  - (b) if the variation was made on the Secretary's own initiative—give the holder a written notice stating the reasons for the variation.

- (5) If the Secretary varies conditions of an export permit under subsection (1), the Secretary must give the holder of the permit a written notice stating the following:
- (a) the varied conditions and any new conditions;
  - (b) if the variation was made on the Secretary's own initiative—the reasons for the varied conditions;
  - (c) the date the varied conditions are to take effect.
- (6) If:
- (a) the holder of an export permit applies to the Secretary to vary the permit or conditions of the permit; and
  - (b) the Secretary decides not to make the variation in accordance with the application;
- the Secretary must give the applicant written notice of the decision. The notice must include the reasons for the decision.

### **230 Period of effect of varied export permit**

A varied export permit:

- (a) takes effect when it is issued; and
- (b) remains in force as prescribed by the rules, unless it is revoked earlier under section 233.

Note: An export permit that is suspended under subsection 231(1) remains in force while it is suspended. However, while the permit is suspended, it does not authorise the export of the goods for which it was issued (see section 232).

### **231 Secretary may suspend export permit**

- (1) The Secretary may suspend an export permit if the Secretary reasonably believes that circumstances prescribed by the rules exist.
- (2) If the Secretary decides to suspend an export permit under subsection (1), the Secretary must give the holder of the permit a written notice stating:
  - (a) that the export permit is to be suspended; and

Section 232

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- (b) the reasons for the suspension.
- (3) If an export permit is suspended under subsection (1), the Secretary may revoke the suspension by written notice to the holder of the permit.

**232 Effect of suspension**

- (1) If the Secretary suspends an export permit under subsection 231(1), the suspension takes effect when the holder of the permit receives written notice of the suspension.
- (2) An export permit that is suspended under subsection 231(1) remains in force while it is suspended. However, while the permit is suspended, it does not authorise the export of the goods for which it was issued.

**233 Secretary may revoke export permit**

- (1) The Secretary may revoke an export permit for a kind of prescribed goods (including an export permit that is suspended under subsection 231(1)) if the Secretary reasonably believes that:
  - (a) the integrity of the goods cannot be ensured; or
  - (b) a condition of the permit has been, or is being, contravened; or
  - (c) the requirements of this Act have not been complied with, or are not likely to be complied with before the goods are imported into the importing country; or
  - (d) an importing country requirement relating to the goods will not be, or is not likely to be, met before the goods are imported into the importing country; or
  - (e) the holder of the permit:
    - (i) made a false, misleading or incomplete statement in the application for the permit; or
    - (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under this Act; or

- (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law; or
- (f) the holder of the permit has contravened a requirement of this Act; or
- (g) circumstances prescribed by the rules exist.

Note: An export permit for a kind of prescribed goods is taken to have been revoked if a temporary prohibition determination applies in relation to the goods (see subsection 26(2)).

- (2) If the Secretary revokes an export permit under subsection (1):
  - (a) the revocation takes effect immediately after the decision to revoke the permit is made; and
  - (b) the Secretary must give the holder of the permit a written notice stating:
    - (i) that the export permit has been revoked; and
    - (ii) the reasons for the revocation.

## Part 4—Other matters

### 234 Secretary may require assessment of goods

- (1) This section applies if an export permit for a kind of prescribed goods is in force.
- (2) The Secretary may require an assessment of the goods to be carried out under Part 2 of Chapter 9 if the Secretary reasonably believes that:
  - (a) the integrity of the goods cannot be ensured; or
  - (b) a condition of the export permit has been, or is likely to be, contravened; or
  - (c) the requirements of this Act have not been complied with, or are not likely to be complied with before the goods are imported into the importing country; or
  - (d) an importing country requirement relating to the goods will not be, or is not likely to be, met before the goods are imported into the importing country; or
  - (e) circumstances prescribed by the rules exist.

Example: The integrity of goods that are intended for human consumption may not be able to be ensured if the goods are likely to deteriorate before they arrive at their intended destination.

### 235 Additional or corrected information in relation to application for export permit etc.

- (1) The holder of an export permit must comply with subsection (2) if:
  - (a) the holder becomes aware that information included in an application made by the holder to which Part 5 of this Chapter applies, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.

Section 236

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- (2) The holder of the export permit must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing whether:
- (a) the requirements of this Act in relation to the export of the goods for which the permit was issued have been complied with, or will be complied with before the goods are imported into the importing country; or
  - (b) the importing country requirements relating to the goods for which the permit was issued have been met, or will be met before the goods are imported into the importing country.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to give information to the Secretary under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**236 Return of export permit**

- (1) The rules may require a person to whom an export permit was issued to return the permit to the Secretary:
- (a) in the circumstances prescribed by the rules; and
  - (b) at the time, or within the period, prescribed by the rules.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:

Section 237

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- (a) the person is required to return an export permit to the Secretary under rules made for the purposes of subsection (1); and
- (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

**237 Notification that goods not to be exported**

The rules may require the holder of an export permit for a kind of prescribed goods to notify the Secretary, in writing, if it is no longer intended to export the goods:

- (a) in the circumstances prescribed by the rules; and
- (b) at the time, or within the period, prescribed by the rules.

Note: The holder may be required to return the export permit to the Secretary (see section 236).



## **Part 5—Applications for export permits**

### **238 Applications to which this Part applies**

This Part applies in relation to the following applications:

- (a) an application under section 224 for an export permit;
- (b) an application under paragraph 229(3)(b) to vary an export permit or conditions of an export permit.

### **239 Requirements for applications**

- (1) An application must:
  - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and
  - (c) include the information (if any) prescribed by the rules; and
  - (d) be accompanied by any documents prescribed by the rules.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

- (2) The Secretary may accept any information or document previously given to the Secretary in connection with an application made under this Act, or a notice of intention to export a consignment of prescribed goods given under this Act, as satisfying any requirement to give that information or document under subsection (1).

Section 240

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- (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (1) for the application.
- (4) To avoid doubt, the Secretary may approve:
  - (a) different forms for applications relating to different kinds of prescribed goods; or
  - (b) a single form for more than one kind of application.

Example: The Secretary may approve a single form to be used to apply for an export permit for a kind of prescribed goods and a government certificate in relation to the goods.

**240 Additional or corrected information**

- (1) A person who has made an application to which this Part applies must comply with subsection (2) if:
  - (a) the person becomes aware that information included in the application, or information or a document given to the Secretary in relation to the application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The person must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to the Secretary's consideration of the application.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
  - (a) the person is required to give information to the Secretary under subsection (2); and

(b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

## **241 Powers of Secretary in relation to application**

The Secretary may do anything the Secretary considers necessary in relation to an application to which this Part applies, including the following:

- (a) request, in writing, the applicant, or another person who the Secretary considers may have information or documents relevant to the application, to give the Secretary further specified information or documents relevant to the application;
- (b) require an audit of export operations carried out in relation to the goods (the *relevant goods*) to which the application relates to be conducted under Part 1 of Chapter 9;
- (c) require an assessment of the relevant goods to be carried out under Part 2 of Chapter 9;
- (d) request the applicant to give the Secretary a written statement, signed and dated by the applicant, verifying that:
  - (i) the requirements of this Act in relation to the export of the relevant goods have been complied with, or will be complied with before the goods are imported into the importing country; and
  - (ii) any importing country requirements relating to the relevant goods have been met, or will be met before the goods are imported into the importing country;
- (e) take, test or analyse samples of the relevant goods or from equipment or other things relevant to the application;
- (f) arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of the relevant goods or from equipment or other things relevant to the application;
- (g) any other thing prescribed by the rules.

Note 1: See Division 2 of Part 6 of Chapter 11 in relation to taking, testing and analysing samples.

**Section 241**

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Note 2: These powers may only be exercised by the Secretary or an authorised officer or APS employee in the Department to whom the powers have been subdelegated under section 288. These powers may not be subdelegated to a nominated export permit issuer (see paragraph 288(2)(c)).

## **Chapter 8—Other matters relating to export**

### **Part 1—Notices of intention to export**

#### **Division 1—Introduction**

##### **242 Simplified outline of this Part**

A notice of intention to export a consignment of prescribed goods may be required to be given in a manner and form approved by the Secretary.

The notice must include the information (if any) prescribed by the rules and must be accompanied by any documents prescribed by the rules.

The notice must be given:

- (a) by a person prescribed by the rules in relation to the goods; and
- (b) to the person prescribed by the rules; and
- (c) at a time, or within the period, prescribed by the rules.

A person who has given a notice of intention to export a consignment of prescribed goods must give the Secretary additional or corrected information in certain circumstances.

## **Division 2—Notices of intention to export**

### **243 Notice of intention to export—general requirements**

- (1) A notice of intention to export a consignment of prescribed goods must:
- (a) if the Secretary has approved, in writing, a manner for giving the notice—be given in an approved manner; and
  - (b) if the Secretary has approved a form for the notice:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and
  - (c) include the information (if any) prescribed by the rules; and
  - (d) be accompanied by any documents prescribed by the rules; and
  - (e) be given by a person prescribed by the rules in relation to the goods; and
  - (f) be given to the person prescribed by the rules; and
  - (g) be given at a time, or within the period, prescribed by the rules.

Note 1: The export of a kind of prescribed goods may be prohibited unless a notice of intention to export the goods is given (see section 29 and rules made for the purposes of that section).

Note 2: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of this Act).

- (2) The Secretary may accept any information or document previously given to the Secretary in connection with an application made under this Act, or a notice of intention to export given under this Act, as satisfying any requirement to give that information or document under subsection (1).

- (3) A notice of intention to export a consignment of prescribed goods is taken not to have been given if the notice does not comply with the requirements referred to in subsection (1) for the notice.
- (4) To avoid doubt, the Secretary may approve:
  - (a) different forms for notices of intention to export different kinds of prescribed goods; or
  - (b) a single form for a notice of intention to export a consignment of prescribed goods and one or more applications under this Act.

#### **244 Additional or corrected information**

- (1) A person who has given a notice of intention to export a consignment of prescribed goods must comply with subsection (2) if:
  - (a) the person becomes aware that information included in the notice, or information or a document given to the Secretary in relation to the notice, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The person must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to assessing whether:
  - (a) the requirements of this Act in relation to the export of the goods have been, are being, or will be complied with; or
  - (b) importing country requirements relating to the goods have been, are being, or will be met.

Note 1: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if:

**Chapter 8** Other matters relating to export

**Part 1** Notices of intention to export

**Division 2** Notices of intention to export

Section 244

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- (a) the person is required to give information to the Secretary under subsection (2); and
- (b) the person fails to comply with the requirement.

Civil penalty:        60 penalty units.



## **Part 2—Trade descriptions**

### **Division 1—Introduction**

#### **245 Simplified outline of this Part**

This Part defines trade description and false trade description for goods and explains when a trade description is applied to goods.

The rules may require a trade description to be applied to prescribed goods that are intended to be exported, and may make other provision in relation to trade descriptions.

A person must not engage in conduct that contravenes rules made for the purposes of this Part.

Except in certain circumstances, a person must not alter or interfere with (whether by way of addition, removal, defacement or otherwise) a trade description applied to prescribed goods that are intended to be exported.

A false trade description must not be applied to prescribed goods that are intended to be exported.

Goods to which a false trade description has been applied must not be entered for export, put on an aircraft or vessel for export, brought to a place for the purpose of being exported, or exported.

## Division 2—Trade descriptions for prescribed goods

### 246 Meaning of *trade description*

- (1) A *trade description* for goods is a description or statement (whether in English or any other language), or a pictorial representation, indication or suggestion (direct or indirect), as to any of the following:
- (a) the nature, number, quantity, quality, purity, class, grade, breed, measure, gauge, size, mass, colour, strength, sex, variety, genus, species or age of the goods;
  - (b) the country or place where the goods were made, produced or grown;
  - (c) the exporter, manufacturer or producer of the goods;
  - (d) the person by whom the goods were selected or in any way prepared;
  - (e) the method, time or place of manufacturing, producing, selecting or otherwise preparing the goods;
  - (f) the time before which, or period within which, the goods are to be used;
  - (g) the batch, lot or other grouping in which the goods are included;
  - (h) the material or ingredients of which the goods are composed or from which they are derived;
  - (i) the goods being the subject of an existing patent or privilege.
- (2) A *trade description* for goods includes a mark that, according to the custom of the trade or common repute, is commonly taken to be an indication of any of the matters referred to in subsection (1).

Note: *Mark* includes a stamp, seal and label (see the definition of *mark* in section 12).

### 247 When a trade description is applied to goods

A trade description is *applied* to goods if the trade description is:

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- (a) applied directly to the goods, their packaging or anything containing the goods; or
- (b) applied to anything attached to the goods, their packaging or anything containing the goods; or
- (c) inserted into anything in which the goods are packaged or anything containing the goods; or
- (d) applied to, or stated in, any document relating to the goods; or
- (e) applied to any covering, label, reel or other thing used in connection with the goods; or
- (f) applied in any way prescribed by the rules; or
- (g) applied in any other way likely to lead to the belief that it describes or designates the goods.

#### **248 Rules may make provision in relation to trade descriptions**

- (1) The rules may make provision for and in relation to trade descriptions for prescribed goods that are intended to be exported.
- (2) Without limiting subsection (1), the rules may:
  - (a) require a trade description to be applied to prescribed goods that are intended to be exported; and
  - (b) make provision for and in relation to the following:
    - (i) the content of trade descriptions;
    - (ii) the accuracy and legibility of trade descriptions;
    - (iii) the methods for applying trade descriptions;
    - (iv) trade descriptions that are in a language other than English;
    - (v) the use of additional information or pictures with trade descriptions.

#### **249 Conduct that contravenes rules**

- (1) A person contravenes this subsection if:
  - (a) the person engages in conduct; and

**Section 250**

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- (b) the conduct contravenes a rule made for the purposes of section 248.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**250 Alteration of or interference with trade description**

*Alterations or interferences before export permit issued*

- (1) A person (other than an authorised officer) must not alter or interfere with (whether by way of addition, removal, defacement or otherwise) a trade description applied to prescribed goods that are intended to be exported and for which an export permit has not been issued, unless the alteration or interference is done in accordance with:
- (a) a direction given to the person by an authorised officer; or
  - (b) an approved arrangement covering the goods; or
  - (c) a written approval given to the person by the Secretary.

Note: If a trade description applied to prescribed goods is altered or interfered with other than in accordance with this subsection, the Secretary may refuse to issue an export permit for the goods (see section 225).

*Alterations or interferences after export permit issued*

- (2) A person (other than an authorised officer) contravenes this subsection if:
- (a) a trade description is applied to a kind of prescribed goods; and
  - (b) the goods are intended to be exported; and
  - (c) the person alters or interferes with (whether by way of addition, removal, defacement or otherwise) the trade description; and
  - (d) the alteration or interference occurs:
    - (i) after an export permit has been issued for the goods; and
    - (ii) before the goods have been exported; and
  - (e) none of the following authorises the alteration or interference:
    - (i) a direction given to the person by an authorised officer;
    - (ii) an approved arrangement covering the goods;
    - (iii) a written approval given to the person by the Secretary.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 370).

*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 240 penalty units.

## **Division 3—False trade descriptions for prescribed goods**

### **251 Meaning of *false trade description***

A trade description for goods is a *false trade description* for the goods if the description is false or likely to mislead in a material respect due to:

- (a) anything contained in or omitted from the description; or
- (b) any alteration of or interference with the description (whether by way of addition, removal, defacement or otherwise).

### **252 False trade description must not be applied to prescribed goods**

*Person must not knowingly apply a false trade description*

- (1) A person contravenes this subsection if:
- (a) the person applies a trade description to goods; and
  - (b) the goods are prescribed goods; and
  - (c) the goods are intended to be exported; and
  - (d) the trade description is a false trade description for the goods; and
  - (e) the person knows that the trade description is a false trade description for the goods.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

*Person must not recklessly apply a false trade description*

- (5) A person contravenes this subsection if:
- (a) the person applies a trade description to goods; and
  - (b) the goods are prescribed goods; and
  - (c) the goods are intended to be exported; and
  - (d) the trade description is a false trade description for the goods.

Note: The physical elements of an offence against subsection (6) are set out in this subsection (see section 370).

*Fault-based offence*

- (6) A person commits an offence if the person contravenes subsection (5).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (7) For the purposes of subsection (6), strict liability applies to paragraph (5)(b).

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 240 penalty units.

**253 Goods with false trade description must not be exported etc.**

- (1) A person contravenes this subsection if:
- (a) the person:
    - (i) enters goods for export; or

Section 253

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- (ii) puts goods on any aircraft or vessel for export; or
- (iii) brings goods to any landing place, port or other place for the purpose of being exported; or
- (iv) exports goods; and
- (b) the goods are prescribed goods; and
- (c) the goods have a trade description applied to them; and
- (d) the trade description is a false trade description for the goods.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.



## **Part 3—Official marks**

### **Division 1—Introduction**

#### **254 Simplified outline of this Part**

The rules may make provision for and in relation to the following:

- (a) marks that are to be official marks for the purposes of this Act and other matters relating to official marks;
- (b) resemblances of official marks and other matters relating to resemblances;
- (c) official marking devices.

A person must not engage in conduct that contravenes rules made for the purposes of this Part.

A false, misleading or deceptive official mark must not be applied to goods that are intended to be exported, or to a document that relates to goods that are intended to be exported or to trade with another country.

An official mark that is applied to goods that are intended to be exported, or to a document that relates to goods that are intended to be exported or to trade with another country, must not be altered so as to be misleading or deceptive.

## Division 2—Rule-making powers

### 255 Official marks

- (1) The rules may provide that a specified mark is an official mark for the purposes of this Act.

Note 1: **Mark** includes a stamp, seal and label (see the definition of **mark** in section 12).

Note 2: The export of particular kinds of prescribed goods may be prohibited unless an official mark is applied to the goods (see section 29 and rules made for the purposes of that section).

- (2) The rules may make provision for and in relation to the following:
- (a) the persons, or classes of persons, who may manufacture, possess, apply, alter or interfere with an official mark;
  - (b) the methods for applying official marks;
  - (c) the circumstances in which an official mark may, or must not, be applied;
  - (d) security of official marks;
  - (e) removal or defacement of official marks;
  - (f) making records in relation to official marks;
  - (g) any other matter relating to official marks.

### 256 Marks resembling official marks

- (1) The rules may make provision for and in relation to marks (**resemblances**) that resemble an official mark or are apparently intended to resemble or pass for an official mark.
- (2) Without limiting subsection (1), the rules may make provision for and in relation to the following:
- (a) the circumstances in which a mark resembles an official mark;
  - (b) the persons, or classes of persons, who may apply a resemblance;
  - (c) the methods for applying resemblances;

- (d) the circumstances in which a resemblance may, or must not, be applied.

## **257 Official marking devices**

### *Meaning of official marking device*

- (1) An **official marking device** is a device that is capable of being used to apply an official mark, but does not include a device prescribed by the rules.

### *Rules may make provision in relation to official marking devices*

- (2) The rules may make provision for and in relation to the following:
- (a) the persons, or classes of persons, who may manufacture or possess an official marking device;
  - (b) the use of official marking devices;
  - (c) security of official marking devices;
  - (d) damaged official marking devices;
  - (e) destruction of official marking devices;
  - (f) making records in relation to official marking devices;
  - (g) any other matter relating to official marking devices.

## **Division 3—Offences and civil penalty provisions**

### **258 Conduct that contravenes rules**

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
  - (b) the conduct contravenes a rule made for the purposes of a provision in Division 2.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

### **259 Applying a false, misleading or deceptive official mark to goods**

- (1) A person contravenes this subsection if:
- (a) the person applies an official mark to goods; and
  - (b) the goods are intended to be exported; and
  - (c) the official mark is false, misleading or deceptive.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).
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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**260 Applying a false, misleading or deceptive official mark to a document**

- (1) A person contravenes this subsection if:
- (a) the person applies an official mark to a document; and
  - (b) the document relates to:
    - (i) goods that are intended to be exported; or
    - (ii) trade with another country; and
  - (c) the official mark is false, misleading or deceptive.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**261 Conduct that results in official mark applied to goods being altered to be false, misleading or deceptive**

- (1) A person contravenes this subsection if:
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Section 262

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- (a) the person engages in conduct; and
- (b) the conduct has the result that an official mark applied to goods is altered so as to be false, misleading or deceptive; and
- (c) the goods are intended to be exported.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**262 Conduct that results in official mark applied to a document being altered to be false, misleading or deceptive**

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
  - (b) the conduct has the result that an official mark applied to a document is altered so as to be false, misleading or deceptive; and
  - (c) the document relates to:
    - (i) goods that are intended to be exported; or
    - (ii) trade with another country.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

## **Part 4—Tariff rate quotas**

### **Division 1—Introduction**

#### **263 Simplified outline of this Part**

The rules may 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.

The Secretary may give written directions to be complied with by a particular person or body in relation to a matter covered by rules made for the purposes of this Part.



## **Division 2—Tariff rate quota systems**

### **264 Tariff rate quota systems**

- (1) The rules may 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.
- (2) Without limiting subsection (1), the rules may make provision for and in relation to the following:
  - (a) determining the amount of tariff rate quota for the export of goods for a period;
  - (b) methods for determining tariff rate quota entitlements for the export of goods;
  - (c) establishing and maintaining a register of tariff rate quota entitlements;
  - (d) surrender, transfer, variation, and revocation of tariff rate quota entitlements;
  - (e) tariff rate quota certificates, including revocation of certificates;
  - (f) imposing conditions, including variation and revocation of conditions;
  - (g) auditing and reporting requirements.
- (3) The Secretary may give written directions to be complied with by a particular person or body in relation to a matter covered by rules made for the purposes of this section.

Note: See also section 309 (general provisions relating to directions).

- (4) If a direction given under this section is inconsistent with rules made for the purposes of this section, the direction prevails and the rules, to the extent of the inconsistency, do not have any effect.

## **Chapter 9—Powers and officials**

### **Part 1—Audits**

#### **Division 1—Introduction**

##### **265 Simplified outline of this Part**

The Secretary may require an audit to be conducted:

- (a) of export operations carried out in certain circumstances; or
- (b) in relation to the performance of functions and the exercise of powers under this Act by certain persons.

An audit may be conducted by an authorised officer or an approved auditor. An approved auditor is a person, or a person included in a class of persons, approved by the Secretary or a person included in a class of persons specified by the rules.

The Secretary may require a single audit, or a program of audits, to be conducted.

Notice of an audit is not required to be given. However, an auditor must comply with the requirements provided by this Part or the rules in relation to the conduct of an audit.

An auditor may exercise certain powers for the purpose of conducting an audit.

An approved auditor may charge a fee in relation to things done in the performance of the approved auditor's functions or the exercise of the approved auditor's powers under this Act.

**Division 2—General****266 Audits of export operations***Export operations in relation to which audit may be required*

- (1) The Secretary may require an audit to be conducted of any of the following:
- (a) export operations carried out at an accredited property or covered by the accreditation of the property;
  - (b) export operations carried out at a registered establishment or covered by the registration of the establishment;
  - (c) export operations covered by an approved arrangement;
  - (d) export operations covered by an export licence;
  - (e) export operations carried out in relation to a kind of prescribed goods by:
    - (i) a person who has applied for an export permit in relation to the goods; or
    - (ii) a person to whom an export permit for the goods has been issued (whether or not the permit has been suspended or revoked);
  - (f) export operations carried out in relation to a kind of goods by:
    - (i) a person who has applied for a government certificate or a tariff rate quota certificate in relation to the goods; or
    - (ii) a person to whom a government certificate or a tariff rate quota certificate in relation to the goods has been issued (whether or not the certificate has been revoked);
  - (g) export operations carried out in any other circumstances prescribed by the rules.

*Matters to which audit must relate*

- (2) An audit under subsection (1) must relate to one or more of the following matters:
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**Section 266**

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- (a) whether a kind of export operations or a kind of goods comply, have complied, or will comply with a requirement of this Act that relates to the export operations or the goods;
  - (b) whether an importing country requirement relating to a kind of export operations or a kind of goods is being, has been, or will be met;
  - (c) whether a kind of export operations are being, have been or will be carried out in accordance with an approved arrangement;
  - (d) whether any of the following are being, have been, or are likely to be complied with:
    - (i) conditions of the accreditation of a property;
    - (ii) conditions of the registration of an establishment;
    - (iii) conditions of an approved arrangement;
    - (iv) conditions of an export licence;
    - (v) conditions of an export permit;
  - (e) whether a matter stated, or to be stated, in a government certificate or a tariff rate quota certificate in relation to a kind of goods is correct;
  - (f) any other matter relating to the operation of this Act prescribed by the rules.
- (3) An audit under subsection (1) may deal with anything that is:
- (a) reasonably necessary for the effective conduct of the audit; or
  - (b) incidental to the matter to which the audit relates.

*Period during which certain audits may be conducted*

- (4) An audit of export operations carried out in relation to a kind of non-prescribed goods by a person referred to in subparagraph (1)(f)(ii) may be conducted at any time during the period of 18 months after a government certificate or a tariff rate quota certificate in relation to goods of that kind was issued to the person.

*Who may conduct audit*

- (5) An audit under this section may be conducted by:
- (a) an authorised officer; or
  - (b) an approved auditor.

**267 Audits in relation to persons performing functions or exercising powers under this Act**

- (1) The Secretary may require an audit to be conducted in relation to:
- (a) the performance of functions and the exercise of powers under this Act by a person who is, or was, any of the following:
    - (i) a third party authorised officer (including a person whose authorisation as a third party authorised officer is, or was, suspended under section 296 or 298C);
    - (ii) an approved auditor;
    - (iii) an approved assessor;
    - (iv) an accredited veterinarian;
    - (v) any other person (other than a Commonwealth authorised officer or a State or Territory authorised officer) who performs or performed functions, or exercises or exercised powers, under this Act; or
  - (b) compliance by a person referred to any of subparagraphs (a)(i) to (iv) with the conditions applying to the performance of functions or the exercise of powers by the person under this Act.

*Who may conduct audit*

- (2) An audit under this section may be conducted by:
- (a) a Commonwealth authorised officer; or
  - (b) a person prescribed by rules made for the purposes of subsection (3).
- (3) The rules may prescribe any of the following for the purposes of paragraph (2)(b):

Section 268

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- (a) a State or Territory authorised officer;
- (b) a third party authorised officer;
- (c) an approved auditor.

**268 Single audit or program of audits may be required**

The Secretary may require, under section 266 or 267, a single audit, or a program of audits, to be conducted in relation to a specified matter or matters included in a specified class of matters.

Note: If the Secretary has required a program of audits to be conducted in relation to a matter, the Secretary may also require additional audits to be conducted in relation to the matter (see subsection 33(1) of the *Acts Interpretation Act 1901*).

**269 Relevant person for an audit**

The *relevant person* for an audit under this Part is as follows:

- (a) for an audit of export operations carried out at an accredited property or covered by the accreditation of the property—the manager of the property;
- (b) for an audit of export operations carried out at a registered establishment or covered by the registration of the establishment—the occupier of the establishment;
- (c) for an audit of export operations covered by an approved arrangement—the holder of the approved arrangement;
- (d) for an audit of export operations covered by an export licence—the holder of the export licence;
- (e) for an audit of export operations carried out in relation to a kind of prescribed goods by a person who has applied for an export permit for the goods—the person who applied for the export permit;
- (f) for an audit of export operations carried out in relation to a kind of prescribed goods by a person to whom an export permit for the goods has been issued—the person to whom the export permit was issued;
- (g) for an audit of export operations carried out in relation to a kind of goods by a person who has applied for a government

certificate or a tariff rate quota certificate in relation to the goods—the person who applied for the certificate;

- (h) for an audit of export operations carried out in relation to a kind of goods by a person to whom a government certificate or a tariff rate quota certificate in relation to the goods has been issued—the person to whom the certificate was issued;
- (i) for an audit of export operations carried out in circumstances prescribed by rules made for the purposes of paragraph 266(1)(g)—the person who carried out the export operations;
- (j) for an audit under section 267—the person to whom the audit relates.

### **270 Conduct of audit**

- (1) The Secretary need not give notice of an audit required under this Part.
- (2) Before starting to conduct an audit, an auditor must give the relevant person for the audit a description of the scope of the audit.
- (3) Before entering premises to conduct an audit, an auditor must show the auditor's identity card to the relevant person for the audit, or another person who apparently represents the relevant person for the audit, if:
  - (a) the relevant person for the audit or the other person requests the auditor to do so; or
  - (b) notice of the audit was not given to the relevant person for the audit.

#### *Rules may make provision in relation to other matters*

- (4) The rules may make provision for and in relation to:
  - (a) other matters relating to the conduct of an audit; and
  - (b) the process to be followed after an audit has been completed.
- (5) Without limiting subsection (4), the rules may make provision for and in relation to the following:

Section 271

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- (a) information that must be provided to the relevant person for the audit during the audit or after the audit is completed;
- (b) requirements for, and in relation to, reports to be provided in relation to an audit;
- (c) actions the Secretary may require the relevant person for the audit to take after the audit has been completed.

**271 Relevant person for an audit must provide assistance**

The relevant person for an audit must provide the auditor with the facilities and assistance that are reasonably necessary for the conduct of the audit.

Note: A failure to comply with this section is a ground for suspension or revocation of the accreditation of a property, the registration of an establishment, an approved arrangement or an export licence (see subparagraphs 94(1)(d)(iii), 102(1)(d)(iii), 127(1)(g)(iii), 138(1)(g)(iii), 171(1)(h)(iii), 179(1)(h)(iii), 205(1)(e)(iii) and 212(1)(e)(iii)).

**272 Powers of auditors**

- (1) For the purpose of conducting an audit under this Part, an auditor may do anything the auditor considers necessary, including the following:
  - (a) request a person who the auditor reasonably believes has information or documents that are relevant to the audit to answer questions, provide information in writing, or produce the documents;
  - (b) take samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates;
  - (c) if the auditor is an authorised officer—take, test or analyse samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates;
  - (d) arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of goods, or from



equipment or other things used in export operations or other operations, to which the audit relates.

Note 1: An auditor who is an authorised officer may also give a direction under section 305.

Note 2: See Division 2 of Part 6 of Chapter 11 in relation to taking, testing and analysing samples.

Note 3: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of this Act).

(2) An auditor:

- (a) may make copies of, or take extracts from, a document or record produced under paragraph (1)(a); and
- (b) for that purpose, may remove the document or record from the place where it was produced.

## **Division 3—Approved auditors**

### **273 Secretary may approve persons to conduct audits**

- (1) The Secretary may, in writing, approve a person, or each person in a specified class of persons, to conduct audits under this Part.
- (2) An instrument of approval under subsection (1) is not a legislative instrument.
- (3) The Secretary must not approve a person to conduct audits under this Part unless the Secretary is satisfied that:
  - (a) the person satisfies the training and qualification requirements determined under subsection (4); or
  - (b) the person will satisfy those training and qualification requirements before the person conducts any audits under this Part.
- (4) The Secretary must determine, in writing, training and qualification requirements for persons to conduct audits under this Part.
- (5) A determination under subsection (4) is not a legislative instrument.
- (6) The rules may make provision for and in relation to matters relating to the approval of persons under subsection (1).
- (7) Without limiting subsection (6), the rules may make provision for and in relation to the following:
  - (a) applications for approval;
  - (b) dealing with such applications;
  - (c) additional requirements that must be met for approval;
  - (d) matters to which the Secretary may or must have regard in considering an application for approval;
  - (e) conditions of an approval;
  - (f) the period of effect of an approval;
  - (g) assessment of the competency of applicants;

(h) suspension and revocation of an approval.

**274 Rules may provide for classes of persons to be auditors**

The rules may provide that a person included in a specified class of persons is approved to conduct audits under this Part.

**275 Approved auditors may charge fees**

- (1) An approved auditor may charge a fee under this section in relation to things done in the performance of the approved auditor's functions or the exercise of the approved auditor's powers under this Act.
- (2) A fee must not be such as to amount to taxation.

## Part 2—Assessment of goods

### Division 1—Introduction

#### 276 Simplified outline of this Part

An assessment of goods may be carried out under this Part only if the assessment is required or permitted to be carried out under this Act.

The purpose of carrying out an assessment of goods under this Part is to verify:

- (a) that the requirements of this Act in relation to the goods have been, or will be, complied with; or
- (b) that importing country requirements relating to the goods have been, or will be, met; or
- (c) that a matter stated, or to be stated, in a government certificate in relation to the goods is true and correct.

An assessment of goods may be carried out by an authorised officer or an approved assessor. An approved assessor is a person, or a person included in a class of persons, approved by the Secretary or a person included in a class of persons specified by the rules.

An assessment of goods must be carried out in accordance with the rules.

An assessor may exercise certain powers in carrying out an assessment.

An approved assessor may charge a fee in relation to things done in the performance of the approved assessor's functions or the exercise of the approved assessor's powers under this Act.

## Division 2—General

### 277 Circumstances in which an assessment may be carried out etc.

#### *Circumstances in which assessment may be carried out*

- (1) An assessment of goods may be carried out under this Part only if the assessment is required or permitted to be carried out under this Act (including under rules made for the purposes of subsection (2)).

Note: For example, the Secretary may require an assessment of goods to be carried out for the purpose of deciding whether to issue:

- (a) a government certificate in relation to goods (see paragraph 68(c)); or
  - (b) an export permit for a kind of prescribed goods (see paragraph 241(c)).
- (2) The rules may prescribe circumstances in which the Secretary may require or permit an assessment of goods to be carried out under this Part.

#### *Purpose of assessment*

- (3) The purpose of carrying out an assessment of goods under this Part is to verify one or more of the following:
  - (a) that the requirements of this Act in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country;
  - (b) that the importing country requirements relating to the goods have been met, or will be met before the goods are imported into the importing country;
  - (c) that a matter stated, or to be stated, in a government certificate in relation to the goods is true and correct.
- (4) An assessment of goods under this Part may also deal with anything that is:
  - (a) reasonably necessary for the effective conduct of the assessment; or

Section 278

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- (b) incidental to the matter to which the assessment relates.

*Who may carry out assessment*

- (5) An assessment of goods under this Part may be carried out by:
  - (a) an authorised officer; or
  - (b) an approved assessor.

Note: For *approved assessor*, see section 12.

**278 Relevant person for an assessment of goods**

The *relevant person* for an assessment of goods under this Part is as follows:

- (a) for an assessment of goods in relation to which an application has been made under this Act—the applicant;
- (b) for an assessment of goods in relation to which a government certificate has been issued—the holder of the government certificate;
- (c) for an assessment of goods for which an export permit has been issued—the holder of the export permit;
- (d) for an assessment of goods in relation to which a notice of intention to export has been given—the person who gave the notice;
- (e) for an assessment of goods in any other circumstances prescribed by the rules—the person prescribed by the rules.

**279 Process for carrying out an assessment of goods etc.**

- (1) The rules may make provision for and in relation to:
  - (a) the carrying out of an assessment of goods; and
  - (b) the process to be followed after an assessment has been completed.
- (2) Without limiting subsection (1), the rules may make provision for and in relation to the following:
  - (a) the process to be followed during an assessment of goods;

- (b) requirements for, and in relation to, documents to be provided in relation to an assessment of goods (including statements verifying the results of the assessment);
- (c) information that must be provided to the relevant person for an assessment of goods during the assessment or after the assessment is completed;
- (d) actions the Secretary may require the relevant person for an assessment of goods to take after the assessment has been completed.

### **280 Powers that may be exercised in carrying out an assessment of goods**

- (1) For the purpose of carrying out an assessment of goods under this Part, an assessor may do anything the assessor considers necessary, including the following:
    - (a) request a person who the assessor reasonably believes has information or documents that are relevant to the assessment to answer questions, provide information in writing, or produce the documents;
    - (b) take, test or analyse samples of the goods;
    - (c) arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of the goods.
- Note 1: An assessor who is an authorised officer may also give a direction under section 305.
- Note 2: See Division 2 of Part 6 of Chapter 11 in relation to taking, testing and analysing samples.
- Note 3: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of this Act).
- (2) An assessor:
    - (a) may make copies of, or take extracts from, a document produced under paragraph (1)(a); and
    - (b) for that purpose, may remove the document from the place where it was produced.

**Chapter 9** Powers and officials

**Part 2** Assessment of goods

**Division 2** General

**Section 280**

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Note: If the relevant person for an assessment of goods does not comply with a request under this section, it may not be possible to verify a matter referred to in subsection 277(3). As a result, the Secretary may, for example, refuse to issue a government certificate in relation to the goods (see section 67) or an export permit for the goods (see section 225).



## **Division 3—Approved assessors**

### **281 Secretary may approve persons to carry out assessments of goods**

- (1) The Secretary may, in writing, approve a person, or each person in a specified class of persons, to carry out assessments of goods under this Part.
- (2) An instrument of approval under subsection (1) is not a legislative instrument.
- (3) The Secretary must not approve a person to carry out assessments of goods under this Part unless the Secretary is satisfied that:
  - (a) the person satisfies the training and qualification requirements determined under subsection (4); or
  - (b) the person will satisfy those training and qualification requirements before the person carries out any assessments under this Part.
- (4) The Secretary must determine, in writing, training and qualification requirements for persons to carry out assessments of goods under this Part.
- (5) A determination under subsection (4) is not a legislative instrument.
- (6) The rules may make provision for and in relation to matters relating to the approval of persons under subsection (1).
- (7) Without limiting subsection (6), the rules may make provision for and in relation to the following:
  - (a) applications for approval;
  - (b) dealing with such applications;
  - (c) additional requirements that must be met for approval;
  - (d) matters to which the Secretary may or must have regard in considering an application for approval;

Section 282

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- (e) conditions of an approval;
- (f) the period of effect of an approval;
- (g) assessment of the competency of applicants;
- (h) suspension and revocation of an approval.

**282 Rules may provide for classes of persons to be assessors**

The rules may provide that a person included in a specified class of persons is approved to carry out assessments of goods under this Part.

**283 Approved assessors may charge fees**

- (1) An approved assessor may charge a fee under this section in relation to things done in the performance of the approved assessor's functions or the exercise of the approved assessor's powers under this Act.
- (2) A fee must not be such as to amount to taxation.

## **Part 3—Powers of the Secretary**

### **Division 1—Introduction**

#### **284 Simplified outline of this Part**

The Secretary may require a person to give the Secretary information or documents that relate to:

- (a) any prescribed goods that have been, or are intended to be, exported; or
- (b) certain other kinds of goods that have been exported; or
- (c) non-prescribed goods in relation to which an application for a government certificate or a tariff rate quota certificate has been made or a government certificate or tariff rate quota certificate has been issued.

The Secretary may arrange for the use, under the Secretary's control, of computer programs for making certain decisions under this Act.

The rules may authorise the Secretary, on behalf of the Commonwealth, to enter into arrangements under which the Commonwealth may pay money for purposes connected with certifying, verifying or auditing the operation of this Act or a person's compliance with importing country requirements.

The Secretary may delegate functions or powers of the Secretary under this Act (other than certain powers including the power to make rules) to an SES employee, or an acting SES employee, in the Department. Certain delegated powers and functions may be subdelegated to an authorised officer or an APS employee in the Department. The power to issue an export permit for certain kinds of prescribed goods may be subdelegated to a nominated export permit issuer.

**Chapter 9** Powers and officials

**Part 3** Powers of the Secretary

**Division 1** Introduction

Section 284

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The Minister may give directions to the Secretary in relation to the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules. However, the Minister must not give directions to the Secretary in relation to a decision on a particular application made under this Act.

## **Division 2—Powers of the Secretary**

### **285 Power to require information or documents**

- (1) The Secretary may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to give the Secretary any information, or produce to the Secretary any documents, specified in the notice that relate to:
  - (a) any prescribed goods that have been, or are intended to be, exported; or
  - (b) any permanently prohibited goods that have been exported, or any goods in relation to which a temporary prohibition determination applied that have been exported (whether the goods were exported before or after the temporary prohibition determination took effect); or
  - (c) any non-prescribed goods in relation to which:
    - (i) an application for a government certificate or a tariff rate quota certificate has been made; or
    - (ii) a government certificate or a tariff rate quota certificate has been issued.
- (2) Without limiting subsection (1), the information or documents specified in the notice may relate to any of the following:
  - (a) the export operations of the person or another person;
  - (b) any live animal that has been, or is intended to be, exported;
  - (c) the preparation of any goods referred to in subsection (1);
  - (d) the material or ingredients:
    - (i) of which goods referred to in subsection (1) are, or are intended to be, composed; or
    - (ii) from which such goods are, or are intended to be, derived;
  - (e) any animals that are intended to be, or that have been, used in the preparation of goods referred to in subsection (1);
  - (f) the source of:
    - (i) any goods referred to in subsection (1); or

Section 285

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- (ii) any material or ingredients referred to in paragraph (d) of this subsection; or
  - (iii) any animals referred to in paragraph (e) of this subsection.
- (3) A notice may be given under subsection (1), requiring information or documents that relate to non-prescribed goods, before or after the goods have been exported and whether or not the goods have been accepted or rejected by the importing country.
- (4) A person contravenes this subsection if:
- (a) the person is required to give the Secretary information, or produce to the Secretary documents, in accordance with a notice given to the person under subsection (1); and
  - (b) the person fails to comply with the requirement.

Note 1: The physical elements of an offence against subsection (5) are set out in this subsection (see section 370).

Note 2: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of this Act).

Note 3: This subsection is not subject to the privilege against self-incrimination (see section 426).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

**286 Power to arrange for certain decisions to be made by computer programs**

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for making certain decisions under this Act.
- (2) The rules may prescribe:
  - (a) the kinds of decisions under this Act that may be made by the operation of a computer program under an arrangement made under subsection (1); and
  - (b) the persons or bodies that may use such a computer program; and
  - (c) the conditions of that use.
- (3) The Secretary must take all reasonable steps to ensure that decisions made by the operation of a computer program under an arrangement made under subsection (1) are correct.
- (4) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.
- (5) The Secretary may make a decision in substitution for a decision the Secretary is taken to have made under subsection (4) if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect.

**287 Rules may authorise Commonwealth to enter into arrangements under which money may be paid for certain purposes**

- (1) The rules may authorise the Secretary, on behalf of the Commonwealth, to enter into arrangements under which the Commonwealth may pay money for purposes connected with certifying, verifying or auditing:
  - (a) the operation of this Act; or
  - (b) a person's compliance with importing country requirements.

Section 288

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- (2) The rules may prescribe the circumstances in which the Secretary may, on behalf of the Commonwealth, enter into an arrangement referred to in subsection (1) for a specified purpose referred to in that subsection.
- (3) Subsections (1) and (2) do not, by implication, limit the executive power of the Commonwealth to enter into arrangements.

**288 Delegation and subdelegation**

*Delegation by Secretary*

- (1) The Secretary may, in writing, delegate any of the Secretary's functions or powers under this Act to an SES employee, or an acting SES employee, in the Department. The functions or powers that may be delegated under this subsection:
- (a) include functions or powers the Secretary has as a relevant chief executive, authorised applicant, infringement officer or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act; and
  - (b) exclude functions and powers referred to in the following table:

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<b>Powers that must not be delegated</b>		
<b>Item</b>	<b>Power</b>	<b>Provision</b>
1	To arrange for the use of computer programs for making certain decisions under this Act	Subsection 286(1)
2	To apply for an adverse publicity order	Subsection 364F(1)
3	To make rules	Section 432

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Note 1: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in section 12).

Note 2: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 3: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

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*Subdelegation*

- (2) If, under subsection (1), the Secretary delegates a function or power to an SES employee or an acting SES employee in the Department, the employee may, in writing, subdelegate the function or power to:
- (a) an authorised officer; or
  - (b) an APS employee in the Department; or
  - (c) if the function or power is to issue export permits for a kind of prescribed goods under section 225 (and without limiting paragraph (a) or (b) of this subsection)—a nominated export permit issuer in relation to prescribed goods of that kind.

Note 1: Section 225 deals with issuing export permits.

Note 2: An authorised officer may only perform a function, or exercise a power, if that function or power is specified in the authorised officer's instrument of authorisation (see subsection 301(1)).

*Powers that must not be subdelegated*

- (3) However, a power under a provision of this Act referred to in the following table must not be subdelegated under subsection (2):

<b>Powers that must not be subdelegated</b>		
<b>Item</b>	<b>Power</b>	<b>Provision</b>
1	To approve a manner for making an application for an exemption	Paragraph 53(3)(a)
2	To approve a form for making an application for an exemption	Paragraph 53(3)(b)
3	To make a decision in relation to an application to export relevant goods, if subsection 52(3) applies to the goods	Section 54
4	To approve a manner for making an application for a government certificate	Paragraph 65(2)(a)
5	To approve a form for making an application for a government certificate	Paragraph 65(2)(b)
6	To make a decision in relation to an	Section 67

**Chapter 9** Powers and officials  
**Part 3** Powers of the Secretary  
**Division 2** Powers of the Secretary

Section 288

<b>Powers that must not be subdelegated</b>		
<b>Item</b>	<b>Power</b>	<b>Provision</b>
	application for a government certificate, if section 69 applies to the application	
7	To direct a person not to carry out specified activities or kinds of activities in relation to a debtor under this Act until a relevant Commonwealth liability has been paid	Subsection 95(3), 103(2), 128(3), 139(2), 172(3), 180(2), 206(3) or 213(2)
8	To direct the occupier of a registered establishment to cease carrying out one or more kinds of export operations in relation to one or more kinds of prescribed goods at the establishment	Subsection 132(1)
9	To keep a register of information about premises that are registered under Chapter 4	Subsection 148(1)
10	To determine a place and a form for keeping a register of information about premises that are registered under Chapter 4	Subsection 148(2)
11	To suspend an export licence on the ground that the holder of the licence is or was an associate of a person referred to in paragraph 221(1)(a), (b), (c) or (d)	Paragraph 205(1)(h)
12	To revoke an export licence on the ground that the holder of the licence is or was an associate of a person referred to in paragraph 221(1)(a), (b), (c) or (d)	Paragraph 212(1)(h)
13	To refuse to grant an export licence to an associate of a person referred to in paragraph 221(1)(a), (b), (c) or (d)	Paragraph 221(2)(a)
14	To give directions to the holder of an export licence	Subsection 222(1)
15	To approve a manner for making an application for an export permit	Paragraph 239(1)(a)
16	To approve a form for making an application for an export permit	Paragraph 239(1)(b)
17	To approve a manner for giving a notice of	Paragraph 243(1)(a)

Section 288

<b>Powers that must not be subdelegated</b>		
<b>Item</b>	<b>Power</b>	<b>Provision</b>
	intention to export	
18	To approve a form for a notice of intention to export	Paragraph 243(1)(b)
19	To give directions to a person or body in relation to a matter covered by rules relating to tariff rate quotas	Subsection 264(3)
20	To give a notice requiring a person to give the Secretary information or produce documents to the Secretary	Subsection 285(1)
21	If rules made for the purposes of section 287 authorise the Secretary to enter into arrangements, on behalf of the Commonwealth—to enter into such arrangements	Section 287
22	To enter into an arrangement with a State or Territory body for officers or employees of the body to be authorised to be authorised officers	Subsection 294(1)
23	To give a direction to an authorised officer about the performance of the authorised officer's functions or the exercise of the authorised officer's powers	Subsection 301(2)
24	To approve a form for an identity card	Paragraph 306(2)(a)
25	To approve a manner for making an application	Paragraph 377(1)(a)
26	To approve a form for making an application	Paragraph 377(1)(b)
27	To remit or refund the whole or part of a cost-recovery charge that is payable or that has been paid to the Commonwealth	Subsection 405(1)
28	To direct a person not to carry out specified activities or kinds of activities in relation to a debtor under this Act until a cost-recovery charge has been paid	Section 406

Section 289

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**Powers that must not be subdelegated**

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<b>Item</b>	<b>Power</b>	<b>Provision</b>
29	To approve a method for taking, testing or analysing a sample	Subparagraph 410(2)(b)(iii)
30	To approve a form for a certificate to be given by an analyst	Subsection 414(2)
31	To approve a form for a claim for compensation	Paragraph 420(4)(a)

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*Delegation and subdelegation under the rules*

- (4) The rules may provide that specified functions or powers of the Secretary under the rules:
- (a) must not be delegated; or
  - (b) must not be subdelegated.

*Delegate or subdelegate must comply with directions*

- (5) In performing any functions or exercising any powers under a delegation or subdelegation, the delegate or subdelegate must comply with any directions of the Secretary or the person who delegated the function or power.

*Application of the Acts Interpretation Act 1901 to subdelegation*

- (6) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

**289 Minister may give directions to Secretary**

- (1) The Minister may, by legislative instrument, give directions to the Secretary in relation to the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to directions given under this

Section 289

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subsection (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The Minister must not give directions to the Secretary in relation to a decision on a particular application made under this Act.

## Part 4—Authorised officers

### Division 1—Introduction

#### 290 Simplified outline of this Part

The Secretary may authorise a person, or each person in a class of persons, who is an officer or employee of a Commonwealth body or a State or Territory body to be an authorised officer under this Act.

The Secretary may authorise a person who is not an officer or employee of a Commonwealth body or a State or Territory body to be a third party authorised officer.

An authorisation is subject to certain conditions.

An authorisation may be varied, suspended or revoked. A show cause notice must be given to a person who is a third party authorised officer before the person's authorisation may be varied, suspended or revoked (except in serious and urgent cases or if the third party authorised officer has requested the variation, suspension or revocation).

An authorised officer has the functions and powers conferred on an authorised officer by this Act that are specified in the authorised officer's instrument of authorisation.

Certain authorised officers may charge a fee in relation to things done in the performance of the authorised officer's functions or the exercise of the authorised officer's powers under this Act.

An authorised officer may give directions to certain persons to provide assistance or to deal with non-compliance with the requirements of this Act.

Section 290

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An authorised officer and other persons who perform functions or duties or exercise powers under this Act may be required to carry an identity card when performing functions or duties or exercising powers under this Act.

An authorised officer may commit an offence if the authorised officer receives goods or services from the occupier of a registered establishment and the occupier of the establishment may commit an offence by providing the goods or services to the authorised officer.

## Division 2—Authorisation

### 291 Authorisation of persons to be authorised officers

*Commonwealth authorised officers and State or Territory authorised officers*

- (1) The Secretary may, in writing, authorise a person, or each person in a class of persons, to be an authorised officer under this Act if:
  - (a) the person, or each person in the class of persons, is an officer or employee of a Commonwealth body; or
  - (b) the person, or each person in the class of persons, is an officer or employee of a State or Territory body.
- (2) The Secretary must not authorise an officer or employee of a State or Territory body to be an authorised officer unless an arrangement is in force under section 294 in relation to:
  - (a) the officer or employee; or
  - (b) a class of persons that includes the officer or employee.

*Third party authorised officers*

- (3) A person who is not an officer or employee of a Commonwealth body or a State or Territory body may apply to the Secretary to be a third party authorised officer.

*Requirements for applications*

- (4) An application under subsection (3) must:
  - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and



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Section 291

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- (c) include the information (if any) prescribed by the rules; and
- (d) be accompanied by any documents prescribed by the rules.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

- (5) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (4).

*Secretary must decide whether to authorise person to be third party authorised officer*

- (6) On receiving an application from a person made under subsection (3), the Secretary must decide:
  - (a) to authorise the person to be a third party authorised officer;
  - or
  - (b) to refuse to authorise the person to be a third party authorised officer.

Note: A decision to refuse to authorise the person to be a third party authorised officer is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the person written notice of the decision (see section 382).

- (7) The Secretary may, in writing, authorise a person to be a third party authorised officer if:
  - (a) the person has made an application under subsection (3); and
  - (b) the person has given the Secretary a written notice stating:
    - (i) the interests, pecuniary or otherwise, of the person that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer; or
    - (ii) if the person has no such interests—that fact; and
  - (c) any other requirement prescribed by the rules is, or has been, met.

**Chapter 9** Powers and officials

**Part 4** Authorised officers

**Division 2** Authorisation

**Section 291**

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Note: A Commonwealth authorised officer or a State or Territory authorised officer may be required under other legislation to disclose interests that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer (see, for example, the *Public Governance, Performance and Accountability Act 2013*).

*Training and qualification requirements*

- (8) The Secretary must not authorise a person to be an authorised officer unless the Secretary is satisfied that:
- (a) the person satisfies the training and qualification requirements determined under subsection (9); or
  - (b) the person will satisfy those training and qualification requirements before the person exercises any powers, or performs any functions, as an authorised officer.
- (9) The Secretary must determine, in writing, training and qualification requirements for authorised officers.
- (10) A determination made under subsection (9) is not a legislative instrument.

*Instrument of authorisation*

- (11) The instrument of authorisation of a person as an authorised officer:
- (a) must specify:
    - (i) the functions and powers that the person may perform or exercise as an authorised officer under this Act; and
    - (ii) any conditions prescribed by the rules that the Secretary has decided, under paragraph 292(1)(a), are not to be conditions of the authorisation; and
    - (iii) any additional conditions of the authorisation imposed under paragraph 292(1)(b); and
  - (b) may specify the period during which the authorisation has effect.

## 292 Conditions of authorisation

- (1) If, under section 291, the Secretary authorises a person to be an authorised officer, the authorisation is subject to:
- (a) the conditions (if any) in relation to the authorisation prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the authorisation); and
  - (b) any additional conditions that the Secretary considers appropriate; and
  - (c) if the person is authorised to be a third party authorised officer—the condition that the officer must comply with subsections (2) and (3) of this section.

Note 1: A person who is third party authorised officer may commit an offence or be liable to a civil penalty if the person contravenes a condition of the person's authorisation (see section 293).

Note 2: If a person who is a Commonwealth authorised officer or a State or Territory authorised officer contravenes a condition of the person's authorisation, the person may breach a code of conduct that applies to the person (see, for example, the Code of Conduct under the *Public Service Act 1999*).

Note 3: A decision to authorise a person to be a third party authorised officer subject to additional conditions is a reviewable decision (see Part 2 of Chapter 11).

### *Third party authorised officer must disclose conflicts*

- (2) A third party authorised officer must give written notice to the Secretary of each interest, pecuniary or otherwise, that the authorised officer acquires and that conflicts or could conflict with the proper performance of the authorised officer's functions or exercise of the authorised officer's powers.

Note: A Commonwealth authorised officer or a State or Territory authorised officer may be required under other legislation to disclose interests that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer (see, for example, the *Public Governance, Performance and Accountability Act 2013*).

Section 293

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- (3) A third party authorised officer who is required to give notice of an interest under subsection (2) must give the notice as soon as practicable after the authorised officer acquires the interest.

**293 Third party authorised officers must not contravene conditions of authorisation**

*Fault-based offence*

- (1) A person commits an offence if:
- (a) the person is a third party authorised officer; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes a condition of the person's authorisation as a third party authorised officer.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) the person is a third party authorised officer; and
  - (b) the person contravenes a condition of the person's authorisation as a third party authorised officer.

Civil penalty: 240 penalty units.

**294 Arrangements for State or Territory officers or employees to be authorised officers**

- (1) The Secretary may enter into an arrangement with a State or Territory body for officers or employees of the body to be authorised to be authorised officers.
- (2) An arrangement under subsection (1) is not a legislative instrument.

## **Division 3—Variation, suspension and revocation of authorisation**

### **Subdivision A—Variation, suspension and revocation on Secretary’s own initiative**

#### **295 Variation of authorisation**

- (1) Subject to section 298 (which applies in relation to third party authorised officers), the Secretary may, at any time, by notice in writing given to a person who is an authorised officer, do any of the following in relation to the person’s authorisation as an authorised officer:
- (a) vary the functions that the person may perform, or the powers that the person may exercise, as an authorised officer under this Act;
  - (b) vary any conditions to which the person’s authorisation is subject under paragraph 292(1)(b) (including by imposing new conditions);
  - (c) if the person’s instrument of authorisation specifies a period during which it has effect—vary the period during which the authorisation has effect;
  - (d) if the person’s instrument of authorisation does not specify a period during which it has effect—vary the authorisation to specify a period during which the authorisation is to have effect;
  - (e) vary any other aspect of the person’s authorisation.

Note: A decision under this subsection in relation to a third party authorised officer is a reviewable decision (see Part 2 of Chapter 11).

- (2) If the person was given a notice (a *show cause notice*) under subsection 298(3) that included the request referred to in paragraph 298(3)(b), the variation must not take effect before the earlier of the following:
- (a) the day after any response to the request is received by the Secretary;

Section 296

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- (b) the end of 14 days after the show cause notice was given.
- (3) If the Secretary makes a variation in relation to a person's authorisation as an authorised officer under subsection (1), the Secretary must:
  - (a) vary the person's instrument of authorisation to include the variation; and
  - (b) give the person the varied instrument of authorisation.

**296 Suspension of authorisation**

- (1) Subject to section 298 (which applies in relation to third party authorised officers), the Secretary may, at any time, by notice in writing given to a person who is an authorised officer, suspend the person's authorisation as an authorised officer.

Note: A decision under this subsection in relation to a third party authorised officer is a reviewable decision (see Part 2 of Chapter 11).

*Period of suspension*

- (2) A suspension must not be for more than 12 months.
- (3) If the person was given a notice (a **show cause notice**) under subsection 298(3) that included the request referred to in paragraph 298(3)(b), the suspension must not start before the earlier of the following:
  - (a) the day after any response to the request is received by the Secretary;
  - (b) the end of 14 days after the show cause notice was given.
- (4) The Secretary may vary the period of a suspension by written notice to the person. However, the total period of the suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension of a person's authorisation as a third party authorised officer is a reviewable decision (see Part 2 of Chapter 11).

*Effect of suspension*

- (5) If a person's authorisation as an authorised officer is suspended for a period under subsection (1), the person is taken not to be an authorised officer under this Act during the period of the suspension.

Note 1: If a person's authorisation as a third party authorised officer is suspended, the Secretary may:

- (a) request the person to notify the Secretary of certain events (see section 299); or
- (b) require an audit to be conducted in relation to the performance of functions and the exercise of powers by the person as a third party authorised officer (see section 267).

Note 2: The person may be required to retain records (see section 408).

*Revocation of suspension*

- (6) The Secretary may revoke a suspension of a person's authorisation as an authorised officer under subsection (1) by written notice to the person.

Note: For the purpose of deciding whether to revoke the suspension, the Secretary may request the person to notify the Secretary of certain events (see section 299).

## **297 Revocation of authorisation**

- (1) Subject to section 298 (which applies in relation to third party authorised officers), the Secretary may, at any time, revoke the authorisation of a person as an authorised officer (including a person in relation to whom a suspension is in effect under section 296 or 298C) by notice in writing given to the person.

Note: A decision under this subsection in relation to a third party authorised officer is a reviewable decision (see Part 2 of Chapter 11).

- (2) If the person was given a notice (a *show cause notice*) under subsection 298(3) that included the request referred to in paragraph 298(3)(b), the revocation must not take effect before the earlier of the following:

Section 298

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- (a) the day after any response to the request is received by the Secretary;
- (b) the end of 14 days after the show cause notice was given.

**298 Notice of proposed action must be given to third party authorised officer**

- (1) The Secretary must not take action (the *proposed action*) under subsection 295(1), 296(1) or 297(1) in relation to a person who is a third party authorised officer unless the Secretary has given a written notice to the person in accordance with subsection (3).
- (2) Subsection (1) does not apply if the Secretary reasonably believes that the need for the proposed action is serious and urgent.
- (3) A notice under subsection (1) must:
  - (a) state that the Secretary is considering taking the proposed action and the reasons for the proposed action; and
  - (b) request the person to give the Secretary, within 14 days after the day the notice is given to the person, a written statement showing cause why the proposed action should not be taken; and
  - (c) include a statement setting out the person's right to seek review of a decision to take the proposed action.

**Subdivision B—Variation, suspension and revocation on application or request by third party authorised officer**

**298A Application for variation of authorisation**

- (1) A person who is a third party authorised officer may apply to the Secretary to:
  - (a) vary the functions that the person may perform, or the powers that the person may exercise, as a third party authorised officer under this Act; or



- (b) vary any conditions to which the person's authorisation is subject under paragraph 292(1)(b) (including by imposing new conditions); or
- (c) vary any other aspect of the person's authorisation.

*Requirements for applications*

- (2) An application under subsection (1) must:
  - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and
  - (c) include the information (if any) prescribed by the rules; and
  - (d) be accompanied by any documents prescribed by the rules.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

- (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (2).

*Secretary must decide whether to make variation*

- (4) If the Secretary receives an application made under subsection (1) to make a variation, the Secretary must decide:
  - (a) to make the variation; or
  - (b) to refuse to make the variation.

Note: A decision to refuse to make the variation is a reviewable decision (see Part 2 of Chapter 11) and the Secretary must give the applicant written notice of the decision (see section 382).

**Section 298B**

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- (5) The Secretary may make the variation if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that it is appropriate to make the variation.

*Notice of decision*

- (6) If the Secretary makes a variation under paragraph (4)(a) in relation to the person's authorisation as a third party authorised officer, the Secretary must:
- (a) vary the person's instrument of authorisation to include the variation; and
  - (b) give the person the varied instrument of authorisation.

**298B Additional or corrected information**

- (1) A person who has made an application under subsection 298A(1) must comply with subsection (2) of this section if:
- (a) the person becomes aware that information included in the application, or information or a document given to the Secretary in relation to the application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The person must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to the Secretary's consideration of the application.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to give information to the Secretary under subsection (2); and

(b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

### **298C Request for suspension of authorisation**

- (1) A person who is a third party authorised officer may request the Secretary, in writing, to suspend the person's authorisation as a third party authorised officer.
- (2) If the Secretary receives a request from a person under subsection (1), the Secretary must, by written notice to the person, suspend the person's authorisation as a third party authorised officer as requested, with effect on the day specified in the notice.

#### *Effect of suspension*

- (3) If a person's authorisation as a third party authorised officer is suspended for a period under subsection (2), the person is taken not to be a third party authorised officer under this Act during the period of the suspension.

Note 1: If a person's authorisation as a third party authorised officer is suspended, the Secretary may:

- (a) request the person to notify the Secretary of certain events (see section 299); or
- (b) require an audit to be conducted in relation to the performance of functions and the exercise of powers by the person as a third party authorised officer (see section 267).

Note 2: The person may be required to retain records (see section 408).

#### *Request to revoke suspension*

- (4) If a person's authorisation as a third party authorised officer is suspended under subsection (2), the person may request the Secretary, in writing, to revoke the suspension.
- (5) If the Secretary receives a request from a person under subsection (4), the Secretary may:

**Section 298D**

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- (a) if the Secretary is satisfied there is no reason why the suspension should not be revoked—revoke the suspension by written notice to the person; or
- (b) in any other case:
  - (i) suspend the person’s authorisation as a third party authorised officer under subsection 296(1); or
  - (ii) revoke the person’s authorisation as a third party authorised officer under subsection 297(1).

Note 1: For the purpose of deciding whether to revoke the suspension, the Secretary may request the person to notify the Secretary of certain events (see section 299).

Note 2: A decision to suspend or revoke a person’s authorisation as a third party authorised officer under subsection 296(1) or 297(1) is a reviewable decision (see Part 2 of Chapter 11).

**298D Request for revocation of authorisation**

- (1) A person who is a third party authorised officer (including a person in relation to whom a suspension is in effect under section 296 or 298C) may request the Secretary, in writing, to revoke the person’s authorisation as a third party authorised officer.
- (2) If the Secretary receives a request from a person under subsection (1), the Secretary must, by written notice to the person, revoke the person’s authorisation as a third party authorised officer with effect on the day specified in the notice.

**Subdivision C—Other provisions**

**299 Secretary may request notification of certain events by suspended third party authorised officer**

- (1) This section applies in relation to a person whose authorisation as a third party authorised officer is suspended for a period under section 296 or 298C.

- (2) For the purpose of deciding whether to revoke the suspension, the Secretary may, in writing, request the person to notify the Secretary, in writing, within 14 days after the request is made:
- (a) of any notifiable event in relation to the person that has occurred since the person's authorisation was suspended; or
  - (b) if no notifiable event in relation to the person has occurred since the person's authorisation was suspended—of that fact.

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of this Act).

- (3) Each of the following is a notifiable event in relation to a person for the purposes of subsection (2):
- (a) the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, an Australian law for a contravention involving fraud or dishonesty;
  - (b) the person acquired an interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer;
  - (c) a pecuniary penalty imposed on the person for a contravention of a provision of this Act or the *Biosecurity Act 2015* became due and payable;
  - (d) a liability of the person for an amount under a Commonwealth law prescribed by the rules became due and payable.

## **Division 4—Functions and powers**

### **300 Rules may confer functions or powers on authorised officers**

The rules may confer functions or powers on authorised officers, or a class of authorised officers, that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of this Act.

Example: The rules may confer on a specified class of authorised officers the power to pass a specified kind of prescribed goods as fit for human consumption.

### **301 Functions and powers of authorised officers**

- (1) An authorised officer has the functions and powers conferred on an authorised officer by this Act that are specified in the authorised officer's instrument of authorisation.

Note 1: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in section 12). See also section 300 which provides for the rules to confer functions or powers on an authorised officer.

Note 2: An authorised officer may only perform a function, or exercise a power, if that function or power is specified in the authorised officer's instrument of authorisation.

*Secretary may give directions to authorised officer*

- (2) The Secretary may give a direction to an authorised officer about the performance of the authorised officer's functions or the exercise of the authorised officer's powers.

Note: See also section 309 (general provisions relating to directions).

*Commonwealth authorised officer may give directions to third party authorised officers*

- (3) A Commonwealth authorised officer may give a direction to a third party authorised officer, or a class of third party authorised officers, about the performance of functions or the exercise of

powers by the third party authorised officer or a third party authorised officer included in the class of third party authorised officers.

Note: See also section 309 (general provisions relating to directions).

*Authorised officer must comply with directions*

- (4) In performing functions or exercising powers under this Act, an authorised officer must comply with any directions given to the authorised officer under subsection (2) or (3).

### **302 Third party authorised officer must not contravene direction**

*Fault-based offence*

- (1) A third party authorised officer commits an offence if:
- (a) the authorised officer is given a direction under subsection 301(2) or (3); and
  - (b) the authorised officer engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Civil penalty provision*

- (2) A third party authorised officer is liable to a civil penalty if the authorised officer contravenes subsection 301(4).

Civil penalty: 240 penalty units.

### **303 Certain authorised officers may charge fees**

- (1) A State or Territory authorised officer, or a third party authorised officer, may charge a fee under this section in relation to things done in the performance of the authorised officer's functions, or the exercise of the authorised officer's powers, under this Act.

Note: Fees may also be charged in relation to the performance of functions, or the exercise of powers, by or on behalf of a Commonwealth authorised officer (see section 399).

Section 304

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- (2) A fee must not be such as to amount to taxation.

**304 Direction to assist persons performing functions etc. under this Act**

- (1) If:
- (a) an authorised officer is performing functions or exercising powers under this Act; and
  - (b) the authorised officer reasonably believes that a person (the *relevant person*) is able to provide reasonable assistance or facilities to the authorised officer, or to any other person who is performing functions or exercising powers under this Act;
- the authorised officer may direct the relevant person to provide that assistance or those facilities.

Note: See also section 309 (general provisions relating to directions).

*Fault-based offence*

- (2) A person commits an offence if:
- (a) the person is given a direction under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the direction.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes a direction given under subsection (1).

Civil penalty: 60 penalty units.



**305 Direction to deal with non-compliance with the requirements of this Act etc.**

*Grounds for giving direction*

- (1) An authorised officer may give a direction to a person (a **relevant person**) referred to in column 1 of an item in the following table if an authorised officer reasonably believes that a ground referred to in column 2 of that item exists.

<b>Directions to deal with non-compliance with the requirements of this Act etc.</b>		
<b>Item</b>	<b>Column 1 Relevant person</b>	<b>Column 2 Grounds for giving direction</b>
1	The manager of an accredited property	Any of the following: (a) a condition of the accreditation of the property has been contravened, or it is likely that such a condition will be contravened; (b) the manager has not complied, or is likely not to comply, with a requirement of this Act; (c) the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the accreditation cannot be ensured, or it is likely that the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the accreditation will not be able to be ensured; (d) particular prescribed goods, or a kind of prescribed goods, covered by the accreditation: (i) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or (ii) do not meet, or are not likely to meet, an importing country requirement relating to the goods
2	The occupier of a registered establishment	Any of the following: (a) a condition of the registration of the

Section 305

<b>Directions to deal with non-compliance with the requirements of this Act etc.</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Relevant person</b>	<b>Grounds for giving direction</b>
		<p>establishment has been contravened, or it is likely that such a condition will be contravened;</p> <p>(b) the occupier has not complied, or is likely not to comply, with a requirement of this Act;</p> <p>(c) the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the registration cannot be ensured, or it is likely that the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the registration will not be able to be ensured;</p> <p>(d) particular prescribed goods, or a kind of prescribed goods, covered by the registration:</p> <p>(i) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or</p> <p>(ii) do not meet, or are not likely to meet, an importing country requirement relating to the goods</p>
3	The holder of an approved arrangement	<p>Any of the following:</p> <p>(a) a condition of the approved arrangement has been contravened, or it is likely that such a condition will be contravened;</p> <p>(b) the holder has not complied, or is likely not to comply, with a requirement of this Act;</p> <p>(c) the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the approved arrangement cannot be ensured, or it is likely that the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the approved arrangement will not be able to be ensured;</p> <p>(d) particular prescribed goods, or a kind of prescribed goods, covered by the approved</p>

**Directions to deal with non-compliance with the requirements of this Act etc.**

<b>Item</b>	<b>Column 1 Relevant person</b>	<b>Column 2 Grounds for giving direction</b>
		arrangement: (i) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or (ii) do not meet, or are not likely to meet, an importing country requirement relating to the goods
4	The holder of an export licence	Any of the following: (a) a condition of the export licence has been contravened, or it is likely that such a condition will be contravened; (b) the holder has not complied, or is likely not to comply, with a requirement of this Act; (c) the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the export licence cannot be ensured, or it is likely that the integrity of particular prescribed goods, or a kind of prescribed goods, covered by the licence will not be able to be ensured; (d) particular prescribed goods, or a kind of prescribed goods, covered by the licence: (i) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or (ii) do not meet, or are not likely to meet, an importing country requirement relating to the goods
5	The applicant for an export permit for a kind of prescribed goods	Some or all of the goods: (a) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or (b) do not meet, or are not likely to meet, an importing country requirement relating to the goods
6	The holder of an export	Some or all of the goods:

Section 305

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**Directions to deal with non-compliance with the requirements of this Act etc.**

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<b>Item</b>	<b>Column 1 Relevant person</b>	<b>Column 2 Grounds for giving direction</b>
	permit for a kind of prescribed goods	(a) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or (b) do not meet, or are not likely to meet, an importing country requirement relating to the goods
7	The person who gave a notice of intention to export a consignment of a kind of prescribed goods	Some or all of the goods in the consignment: (a) do not comply, or are not likely to comply, with a requirement of this Act that applies in relation to the goods; or (b) do not meet, or are not likely to meet, an importing country requirement relating to the goods
8	A person of a kind prescribed by the rules (who may be a relevant person referred to in another item of this table)	A ground prescribed by the rules

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*Content of direction*

- (2) A direction under subsection (1) must require the relevant person to take specified action (which may include to cease carrying out export operations in relation to particular prescribed goods or a kind of prescribed goods), within a specified period, to deal with the ground for giving the direction.

Note 1: An authorised officer may give more than one direction relating to a ground (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Note 2: See also section 309 (general provisions relating to directions).

- (3) However, a direction under subsection (1) must not require the relevant person to cease carrying out export operations in relation

to particular prescribed goods, or a kind of prescribed goods, unless an authorised officer reasonably believes that:

- (a) one or more of the following grounds exists:
    - (i) the goods do not comply, or it is likely that the goods do not comply, with a requirement of this Act that applies in relation to the goods;
    - (ii) the goods do not meet, or it is likely that the goods do not meet, an importing country requirement relating to the goods;
    - (iii) the integrity of the goods cannot be ensured;
    - (iv) a ground prescribed by the rules; and
  - (b) that ground, or those grounds, cannot be dealt with other than by ceasing the relevant export operations.
- (4) A direction under subsection (1) that is given in writing must state that the relevant person may be liable to a civil penalty if the person fails to comply with the direction.

*Civil penalty provision*

- (5) A person who is given a direction under subsection (1) must comply with the direction.

Civil penalty:        60 penalty units.

- (6) Subsection (5) does not apply if:
- (a) the direction was given in writing and the direction did not include the statement referred to in subsection (4); or
  - (b) the direction was given orally and the authorised officer did not take reasonable steps to inform the person that the person may be liable to a civil penalty for failing to comply with the direction.

Note:        A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (7) For the purposes of paragraph (6)(b), it is sufficient if the following form of words is used: “You may be liable to a civil penalty if you fail to comply with this direction”.

## Division 5—Miscellaneous

### 306 Identity cards

- (1) The Secretary may issue an identity card to any of the following:
  - (a) an authorised officer;
  - (b) an approved auditor;
  - (c) any other person who performs functions or duties or exercises powers under this Act and is prescribed by the rules.
- (2) An identity card issued to a person under subsection (1) must:
  - (a) be in the form approved by the Secretary; and
  - (b) contain a recent photograph of the person.
- (3) Subject to subsection (5), if the Secretary issues an identity card to an authorised officer under subsection (1), the authorised officer must carry the identity card at all times when performing functions or duties or exercising powers as an authorised officer.
- (4) Subject to subsection (5), if the Secretary issues an identity card to an approved auditor under subsection (1), the approved auditor must carry the identity card at all times when conducting an audit under Part 1 of Chapter 9.
- (5) An authorised officer or approved auditor need not carry the identity card in the circumstances prescribed by the rules.

### 307 Offence—failure to return identity card

- (1) A person contravenes this subsection if:
  - (a) the person has been issued with an identity card under subsection 306(1); and
  - (b) the person ceases to be a person referred to in paragraph 306(1)(a), (b) or (c); and
  - (c) the person does not, within 14 days after so ceasing, return the person's identity card to the Secretary.

- (2) Subsection (1) of this section does not apply:
- (a) to an authorised officer whose authorisation has been suspended; or
  - (b) if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 1 penalty unit.

**308 Certain goods or services must not be provided to, or received by, authorised officers**

*Occupier of registered establishment must not provide goods or services to authorised officer*

- (1) The occupier of a registered establishment must not provide goods or services to an authorised officer.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) Subsection (1) does not apply if the Secretary has approved, in writing, the provision of the goods and services to the authorised officer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply in relation to goods or services that are provided to a third party authorised officer under a contract of employment or a contract for services.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

**Section 309**

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*Authorised officer must not receive goods or services from occupier of registered establishment*

- (4) An authorised officer must not receive goods or services from the occupier of a registered establishment.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (5) Subsection (4) does not apply if the Secretary has approved, in writing, the provision of the goods and services to the authorised officer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (4) does not apply in relation to goods or services that are provided to a third party authorised officer under a contract of employment or a contract for services.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Definition of goods*

- (7) For the purposes of this section:

**goods** includes any article, substance or commodity.

**309 General provisions relating to directions**

- (1) Unless otherwise provided by this Act, a person who is permitted to give a direction under this Act may give the direction orally or in writing (including by electronic means).

*Written copy of oral direction must be given*

- (2) If a person gives a direction under this Act orally, the person must, as soon as practicable after giving the direction, also give the direction in writing (including by electronic means).

- (3) A failure to comply with subsection (2) does not affect the validity of the direction.



Note: If an authorised officer fails to comply with subsection (2), the Secretary may suspend or revoke the authorisation of the authorised officer under Division 3.

*Directions are not legislative instruments*

- (4) Unless otherwise provided by this Act, a direction that is given under this Act in writing is not a legislative instrument.

*Inconsistent directions*

- (5) Subject to subsection (6), a later direction overrides an earlier direction to the extent of any inconsistency.
- (6) If:
- (a) a direction (**direction A**) is given by a State or Territory authorised officer or a third party authorised officer; and
  - (b) the direction is inconsistent with a direction (**direction B**) given by a Commonwealth authorised officer;
- then direction B prevails and direction A, to the extent of the inconsistency, does not have any effect.

## **Part 5—Accredited veterinarians and approved export programs**

### **Division 1—Introduction**

#### **310 Simplified outline of this Part**

The Secretary may approve programs of export operations to be carried out by an accredited veterinarian or an authorised officer for the purpose of ensuring:

- (a) the health and welfare of eligible live animals; or
- (b) the health and condition of eligible animal reproductive material.

The rules may make provision for and in relation to the following:

- (a) matters relating to the approval of programs of export operations;
- (b) implementation, variation, suspension and revocation of approved export programs;
- (c) dealing with inconsistencies between approved export programs that relate to the same export operations;
- (d) accreditation of veterinarians for the purposes of carrying out export operations in approved export programs.

The Secretary may direct an authorised officer to carry out some or all of the export operations in an approved export program or to monitor or review the carrying out of export operations in approved export programs.

A person may commit an offence for failing to comply with certain requirements relating to approved export programs.

A person may commit an offence or be liable to a civil penalty if the person obstructs or hinders an accredited veterinarian, or an authorised officer, in carrying out export operations in an approved export program.

## **Division 2—Approved export programs**

### **311 Approved export programs**

- (1) The Secretary may, in writing, approve programs of export operations to be carried out by an accredited veterinarian or an authorised officer for the purpose of ensuring:
  - (a) the health and welfare of eligible live animals; or
  - (b) the health and condition of eligible animal reproductive material.
  
- (2) For the purposes of subsection (1), the export operations to be carried out in a program of export operations:
  - (a) may include (but are not limited to) any of the following:
    - (i) monitoring the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material;
    - (ii) examining, testing or treating eligible live animals or eligible animal reproductive material;
    - (iii) keeping records of the implementation of the program;
    - (iv) making declarations attesting to the completion of the requirements of the program;
    - (v) otherwise reporting on the implementation of the program;
    - (vi) any other matter prescribed by the rules; and
  - (b) may differ depending on any of the following:
    - (i) the country to which the eligible live animals or eligible animal reproductive material is to be exported;
    - (ii) the kind of eligible live animals or eligible animal reproductive material involved;
    - (iii) the method by which the eligible live animals or eligible animal reproductive material is to be transported;
    - (iv) any other relevant matter.
  
- (3) The Secretary may, under subsection (1):

- (a) approve a program of export operations:
    - (i) on application by a person who wishes to export eligible live animals or eligible animal reproductive material; or
    - (ii) on the Secretary's own initiative; and
  - (b) approve more than one program of export operations to be carried out in relation to eligible live animals or eligible animal reproductive material to be exported by a person.
- (4) The rules may make provision for and in relation to the following:
- (a) matters relating to the approval of programs of export operations referred to in subsection (1);
  - (b) the implementation, variation, suspension and revocation of approved export programs;
  - (c) dealing with inconsistencies between approved export programs that relate to the same export operations.
- (5) The rules may also provide for:
- (a) the giving of directions to a person who wishes to export eligible live animals or eligible animal reproductive material in relation to the implementation of an approved export program; and
  - (b) the publishing by the Secretary of records and reports made by accredited veterinarians and authorised officers in relation to approved export programs.

### **312 Accreditation of veterinarians**

- (1) The rules may make provision for and in relation to the accreditation of veterinarians for the purposes of carrying out export operations in approved export programs.
- (2) Without limiting subsection (1), the rules may make provision for and in relation to any of the following:
  - (a) requirements that must be met for accreditation;
  - (b) applications for accreditation;
  - (c) the period of an accreditation;
  - (d) conditions of an accreditation;

Section 313

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- (e) variation, suspension and revocation of an accreditation;
- (f) records and reporting by an accredited veterinarian.

**313 Secretary may direct authorised officers to carry out certain export operations in approved export program**

- (1) The Secretary may direct an authorised officer to carry out some or all of the export operations in an approved export program, whether or not an authorised officer is required in accordance with the program itself to carry out those export operations.

Note: See also section 309 (general provisions relating to directions).

- (2) If the Secretary gives a direction under subsection (1) in relation to some or all of the export operations in an approved export program, the Secretary must, in writing, notify the person whose export operations are affected by the direction.

**314 Secretary may direct authorised officer to monitor or review export operations in approved export programs**

- (1) The Secretary may direct an authorised officer to monitor or review:
  - (a) the carrying out by accredited veterinarians of export operations in approved export programs; or
  - (b) export operations in approved export programs carried out by persons who export eligible live animals or eligible animal reproductive material.

Note 1: The Secretary may also require an audit to be conducted in relation to the performance of functions and the exercise of powers under this Act by an accredited veterinarian (see section 267).

Note 2: See also section 309 (general provisions relating to directions).

- (2) If:
  - (a) the Secretary gives a direction to an authorised officer under subsection (1); and

- (b) the authorised officer identifies a deficiency in the carrying out of export operations in an approved export program by an accredited veterinarian;

the authorised officer may, in writing, direct the accredited veterinarian to remedy the deficiency within such reasonable period as is specified in the direction.

Note: The accredited veterinarian may commit an offence if the veterinarian fails to comply with the direction (see section 317).

- (3) A direction to an accredited veterinarian under subsection (2) must:
- (a) describe the deficiency; and
  - (b) state that the accredited veterinarian may commit an offence if the accredited veterinarian fails to remedy the deficiency within the period specified in the direction.

### **Division 3—Offences and civil penalty provisions**

#### **315 Offence—person other than accredited veterinarian or authorised officer carrying out export operations in approved export program**

- (1) A veterinarian commits an offence if:
- (a) the veterinarian carries out export operations in an approved export program; and
  - (b) the veterinarian is reckless as to whether the export operations are in such a program; and
  - (c) the veterinarian is not:
    - (i) an accredited veterinarian; or
    - (ii) an authorised officer who has been directed under subsection 313(1) to carry out the export operations.

Penalty: 50 penalty units.

- (2) Strict liability applies to paragraphs (1)(a) and (c).

#### **316 Strict liability offence—failure to keep records or provide reports in relation to approved export program**

An accredited veterinarian commits an offence of strict liability if:

- (a) the accredited veterinarian is required by the rules to keep records, or provide reports, in connection with an approved export program; and
- (b) the accredited veterinarian contravenes the requirement.

Penalty: 50 penalty units.

#### **317 Strict liability offence—failure to remedy deficiency in carrying out approved export program**

An accredited veterinarian commits an offence of strict liability if:



- (a) the veterinarian is given a direction under subsection 314(2);  
and
- (b) the veterinarian fails to comply with the direction.

Penalty: 50 penalty units.

**318 Offence—failure to ensure accredited veterinarian is engaged to carry out relevant export operations in approved export program**

A person commits an offence if:

- (a) the person carries out export operations; and
- (b) the person is reckless as to whether the export operations are in an approved export program; and
- (c) the person does not ensure that, at all times when the approved export program applies, an accredited veterinarian is engaged to carry out the export operations in the program, other than export operations that an authorised officer is required to carry out in accordance with:
  - (i) the program; or
  - (ii) a direction under subsection 313(1).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

**319 Strict liability offence—contravening requirement to allow accredited veterinarian etc. to accompany eligible live animals during transport to overseas destination**

A person commits an offence of strict liability if:

- (a) under the rules, the person is required to allow an accredited veterinarian or an authorised officer to accompany eligible live animals during their transport from Australia to their overseas destination in connection with an approved export program; and
- (b) the person contravenes the requirement.

Penalty: 50 penalty units.

Section 320

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**320 Person must not obstruct or hinder accredited veterinarians etc. carrying out export operations in approved export program**

- (1) A person contravenes this subsection if the person obstructs or hinders an accredited veterinarian, or an authorised officer, in carrying out export operations in an approved export program.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 50 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**321 Strict liability offence—contravening requirement to provide reasonable facilities and assistance to accredited veterinarian etc.**

- (1) If:  
(a) an accredited veterinarian is engaged to carry out some or all of the export operations in an approved export program; or

- (b) under subsection 313(1), the Secretary directs an authorised officer to carry out some or all of those export operations; the person who wishes to export the eligible live animals or eligible animal reproductive material to which the program relates must provide the accredited veterinarian or authorised officer with all reasonable facilities and assistance necessary to carry out the export operations.
- (2) A person commits an offence of strict liability if:
- (a) the person is required to provide facilities and assistance under subsection (1); and
  - (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

**Chapter 9** Powers and officials

**Part 5** Accredited veterinarians and approved export programs

**Division 4** Extended geographical operation of offences

Section 322

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## **Division 4—Extended geographical operation of offences**

### **322 Extended geographical operation of offences**

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against a provision in Division 3.

## **Chapter 10—Compliance and enforcement**

### **Part 1—Introduction**

#### **323 Simplified outline of this Part**

This Part modifies the meaning of authorised officer for the purposes of this Chapter.

#### **324 Modified meaning of *authorised officer***

- (1) For the purposes of this Chapter, and any other provision of this Act to the extent that it relates to this Chapter, ***authorised officer*** means a Commonwealth authorised officer, or a State or Territory authorised officer, who satisfies the requirements determined under subsection (2).
- (2) The Secretary must determine, in writing, training and qualification requirements for authorised officers in relation to the performance of functions or duties and the exercise of powers under this Chapter or the Regulatory Powers Act.
- (3) A determination made under subsection (2) is not a legislative instrument.

## Part 2—Monitoring

### Division 1—Introduction

#### 325 Simplified outline of this Part

Authorised officers may enter premises under a warrant or with consent of the occupier and exercise monitoring powers there under Part 2 of the Regulatory Powers Act, for the purposes of determining:

- (a) whether this Act has been, or is being, complied with; or
- (b) whether information given in compliance or purported compliance with this Act is correct.

An authorised officer may be assisted by other persons in exercising powers under that Part.

That Part contains the rules for obtaining a monitoring warrant, and the powers and obligations of authorised officers in entering premises under a monitoring warrant or with consent.

## **Division 2—Monitoring under Part 2 of the Regulatory Powers Act**

### **326 Basic monitoring powers under Part 2 of the Regulatory Powers Act**

*Provisions subject to monitoring*

- (1) This Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note 1: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Note 2: An authorised officer may, under Part 5 of this Chapter, enter certain kinds of premises without a warrant or consent to exercise monitoring powers.

*Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

*Related provisions, authorised applicant, authorised person, issuing officer and relevant court*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions of this Act:
- (a) each related provision (as defined in section 12 of this Act) is related to the provisions of this Act; and
  - (b) an authorised officer is an authorised applicant; and
  - (c) an authorised officer is an authorised person; and
  - (d) an issuing officer (as defined in section 12 of this Act) is an issuing officer; and

Section 327

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- (e) a relevant court (as defined in section 12 of this Act) is the relevant court.

*Person assisting*

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions of this Act.

Note: An authorised person may be assisted by other persons in exercising powers or performing functions or duties referred to in this subsection if the assistance is necessary and reasonable (see paragraph 23(1)(a) of the Regulatory Powers Act).

*Extension to external Territories*

- (5) Part 2 of the Regulatory Powers Act, as it applies in relation to a provision of this Act, extends to every external Territory, and each other area, to which the provision extends under subsection 8(2).

**327 Modifications of Part 2 of the Regulatory Powers Act**

*Additional monitoring power*

- (1) For the purposes of Part 2 of the Regulatory Powers Act, the additional powers referred to in subsection (2) are also taken to be monitoring powers for the purposes of determining:
- (a) whether a provision referred to in subsection 326(1) has been, or is being, complied with; or
  - (b) the correctness of information referred to in subsection 326(2).
- (2) The additional monitoring powers are:
- (a) the powers to take, test and analyse samples of any thing on premises entered under Part 2 of the Regulatory Powers Act; and
  - (b) the power to secure premises entered under Part 2 of the Regulatory Powers Act; and



- (c) the power to secure things on premises entered under Part 2 of the Regulatory Powers Act for the purpose of testing or analysing those things.

*Identity cards*

- (3) Part 2 of the Regulatory Powers Act applies in relation to the provisions of this Act as if a reference in that Part to an identity card were a reference to an identity card issued under section 306 of this Act.
- (4) The following provisions of the Regulatory Powers Act do not apply in relation to the provisions of this Act:
  - (a) the definition of **identity card** in section 4;
  - (b) sections 13 and 15;
  - (c) Division 8 of Part 2.

*Premises*

- (5) Part 2 of the Regulatory Powers Act applies in relation to the provisions of this Act as if a reference in that Part to premises were a reference to premises as defined in section 12 of this Act.

*Use of force in executing a warrant*

- (6) In executing a monitoring warrant:
  - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

## Part 3—Investigation

### Division 1—Introduction

#### 328 Simplified outline of this Part

An authorised officer may, under Part 3 of the Regulatory Powers Act, gather material that relates to the contravention of offence and civil penalty provisions in this Act.

Under that Part:

- (a) an authorised officer may enter premises if there are reasonable grounds for suspecting that there may be such material on the premises; and
- (b) entry must be with the consent of the occupier of the premises or under an investigation warrant; and
- (c) an authorised officer who enters premises may exercise investigation powers.

An authorised officer may be assisted by other persons in exercising powers under Part 3 of the Regulatory Powers Act.

That Part contains the rules for obtaining an investigation warrant, and the obligations and powers of authorised officers in entering premises under an investigation warrant or with consent.

## **Division 2—Investigating under Part 3 of the Regulatory Powers Act**

### **329 Basic investigation powers under Part 3 of the Regulatory Powers Act**

#### *Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
  - (b) a civil penalty provision of this Act; or
  - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note 1: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Note 2: An authorised officer may, under Part 5 of this Chapter, enter certain kinds of premises without a warrant or consent to exercise investigation and seizure powers.

#### *Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision referred to in subsection (1):
- (a) each related provision (as defined in section 12 of this Act) is related to that evidential material; and
  - (b) an authorised officer is an authorised applicant; and
  - (c) an authorised officer is an authorised person; and
  - (d) an issuing officer (as defined in section 12 of this Act) is an issuing officer; and
  - (e) the Secretary is the relevant chief executive; and
  - (f) a relevant court (as defined in section 12 of this Act) is the relevant court.

**Section 330**

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*Person assisting*

- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision referred to in subsection (1).

Note: An authorised person may be assisted by other persons in exercising powers or performing functions or duties referred to in this subsection if the assistance is necessary and reasonable (see paragraph 53(1)(a) of the Regulatory Powers Act).

*Extension to external Territories*

- (4) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision referred to in subsection (1), extends to every external Territory, and each other area, to which the provision extends under subsection 8(2).

**330 Modifications of Part 3 of the Regulatory Powers Act**

*Additional investigation power*

- (1) For the purposes of Part 3 of the Regulatory Powers Act, the additional powers referred to in subsection (2) are also taken to be investigation powers in relation to evidential material that relates to a provision referred to in subsection 329(1).
- (2) The additional investigation powers are the powers to take, test and analyse samples of any thing on premises entered under Part 3 of the Regulatory Powers Act.

*Identity cards*

- (3) Part 3 of the Regulatory Powers Act applies in relation to a provision referred to in subsection 329(1) of this Act as if a reference in that Part to an identity card were a reference to an identity card issued under section 306 of this Act.

- (4) The following provisions of the Regulatory Powers Act do not apply in relation to a provision referred to in subsection 329(1) of this Act:
- (a) the definition of *identity card* in section 4;
  - (b) section 43;
  - (c) Division 9 of Part 3.

*Premises*

- (5) Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision referred to in subsection 329(1) of this Act as if a reference in that Part to premises were a reference to premises as defined in section 12 of this Act.

*Use of force in executing a warrant*

- (6) In executing an investigation warrant:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

## Part 4—Entry to adjacent premises

### Division 1—Introduction

#### 331 Simplified outline of this Part

An authorised officer may enter premises adjacent to other premises to gain access to the other premises. The entry must be with the consent of the occupier of the adjacent premises or under an adjacent premises warrant issued by an issuing officer.

An authorised officer who enters adjacent premises under this Part is subject to certain obligations and may exercise certain powers.

If adjacent premises are entered under an adjacent premises warrant, the appropriate person for the adjacent premises may observe the execution of the warrant and must provide facilities and assistance for the effective exercise of powers on the premises.

#### 332 Modified meaning of *premises*

In this Part, *premises* does not include a conveyance.

## **Division 2—Entering adjacent premises to gain access to other premises**

### **333 Entering adjacent premises to gain access to other premises**

- (1) An authorised officer may enter any premises (*adjacent premises*) if it is necessary to do so for the purpose of gaining access to other premises to perform functions or duties, or exercise powers, as an authorised officer (including as an authorised person for the purposes of Part 2 or 3 of the Regulatory Powers Act as those Parts apply in relation to this Act).
- (2) However, an authorised officer is not authorised to enter adjacent premises under subsection (1) unless:
  - (a) the occupier of the premises has consented to the entry and the authorised officer has shown the authorised officer's identity card if required by the occupier; or
  - (b) the entry is made under an adjacent premises warrant.

Note: For the issue of an adjacent premises warrant, and the obligations and powers of authorised officers in entering premises under an adjacent premises warrant or with consent, see Divisions 3 and 4 of this Part and Parts 2 and 3 of the Regulatory Powers Act (as they apply because of Parts 2 and 3 of this Chapter).

### **334 Entry under adjacent premises warrant**

An authorised officer who enters premises under an adjacent premises warrant, and any person assisting, must take all reasonable steps to ensure that they cause as little inconvenience to the occupier of the premises as is practicable.

## **Division 3—Adjacent premises warrants**

### **335 Application and issue of adjacent premises warrant**

#### *Application for warrant*

- (1) An authorised officer may apply to an issuing officer for an adjacent premises warrant in relation to premises.

#### *Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purpose of gaining access to other premises to perform functions or duties, or exercise powers, as an authorised officer for the purposes of:
  - (a) Part 2 or 3 of the Regulatory Powers Act as those Parts apply in relation to this Act; or
  - (b) Part 5 of this Chapter.
- (3) However, the issuing officer must not issue the warrant unless the authorised officer or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that it is an adjacent premises warrant; and
  - (c) state the purpose for which the warrant is issued; and
  - (d) authorise one or more authorised officers (whether or not named in the warrant), from time to time while the warrant remains in force, to enter the premises, and to remain on the premises for such period as is reasonably necessary, for the



purpose of gaining access to other premises to perform functions or duties, or exercise powers, as an authorised officer for the purposes of:

- (i) Part 2 or 3 of the Regulatory Powers Act as those Parts apply in relation to this Act; or
  - (ii) Part 5 of this Chapter; and
- (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to be in force.

## **Division 4—Obligations and powers of authorised officers**

### **336 Consent**

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 333(2)(a), an authorised officer must inform the occupier of the following:
  - (a) the reasons for entering the premises;
  - (b) that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as referred to in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised officer entered premises because of the consent of the occupier of the premises, the authorised officer, and any person assisting the authorised officer, must leave the premises if the consent ceases to have effect.

### **337 Announcement before entry under warrant**

- (1) Before an authorised officer enters premises under an adjacent premises warrant, the authorised officer must:
  - (a) announce that the authorised officer is authorised to enter the premises; and
  - (b) if an appropriate person for the premises is present at the premises:
    - (i) ensure that the identity card of the authorised officer is shown to the appropriate person; and
    - (ii) give any person present at the premises an opportunity to allow entry to the premises.

*Exception for some adjacent premises warrants*

- (2) However, an authorised officer is not required to comply with subsection (1) if:
- (a) entry to the premises is to be made for the purposes of executing an investigation warrant or monitoring warrant on other premises; and
  - (b) the authorised officer believes on reasonable grounds that immediate entry to the premises is required:
    - (i) to ensure the safety of a person; or
    - (ii) to ensure that the effective execution of the investigation warrant or monitoring warrant is not frustrated.
- (3) If:
- (a) an authorised officer does not comply with subsection (1) because of subsection (2); and
  - (b) an appropriate person for the premises is present at the premises;
- the authorised officer must, as soon as practicable after entering the premises, show the authorised officer's identity card to the appropriate person.

**338 Authorised officer to be in possession of warrant**

An authorised officer executing an adjacent premises warrant must be in possession of the warrant or a copy of the warrant.

**339 Details of warrant etc. to be provided**

- (1) An authorised officer must comply with subsection (2) if:
- (a) an adjacent premises warrant is being executed in relation to premises; and
  - (b) an appropriate person for the premises is present at the premises while the warrant is being executed.
- (2) The authorised officer must, as soon as practicable:

**Chapter 10** Compliance and enforcement

**Part 4** Entry to adjacent premises

**Division 4** Obligations and powers of authorised officers

Section 340

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- (a) make a copy of the warrant available to the appropriate person (which need not include the signature of the issuing officer who issued it); or
- (b) inform the appropriate person of the rights and responsibilities of the person under Division 5.

**340 Use of force in executing a warrant**

In executing an adjacent premises warrant, an authorised officer may use such force against things as is necessary and reasonable in the circumstances.

## **Division 5—Appropriate person's rights and responsibilities**

### **341 Right to observe execution of warrant**

- (1) An appropriate person for premises to which an adjacent premises warrant relates is entitled to observe the execution of the warrant if the person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the appropriate person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **342 Responsibility to provide facilities and assistance**

- (1) An appropriate person for premises to which an adjacent premises warrant relates must provide the following persons with all reasonable facilities and assistance for the effective exercise of their powers while on the premises:
  - (a) an authorised officer executing the warrant;
  - (b) each person assisting the authorised officer.

#### *Fault-based offence*

- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty: 30 penalty units.

## Division 6—Powers of issuing officers

### 343 Powers of issuing officers

*Powers conferred personally*

- (1) A power conferred on an issuing officer by this Part is conferred on the issuing officer:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

*Powers need not be accepted*

- (2) The issuing officer need not accept the power conferred.

*Protection and immunity*

- (3) An issuing officer exercising the power has the same protection and immunity as if the issuing officer were exercising the power:
  - (a) as the court of which the issuing officer is a member; or
  - (b) as a member of the court of which the issuing officer is a member.

## **Part 5—Entering and exercising powers on premises without a warrant or consent**

### **Division 1—Introduction**

#### **344 Simplified outline of this Part**

An authorised officer may enter certain kinds of premises without a warrant or consent to exercise monitoring powers or investigation and seizure powers.

An authorised officer who enters premises under this Part is subject to certain obligations and may exercise certain powers.

The appropriate person for the premises may observe the exercise of powers by the authorised officer and must provide facilities and assistance.

#### **345 Premises to which this Part applies**

This Part applies in relation to the following premises (in this Part called *relevant premises*):

- (a) premises that are, or that form part of, a registered establishment;
- (b) premises in or on, or that form part of, an accredited property.

## **Division 2—Monitoring and searching relevant premises**

### **346 Monitoring relevant premises**

- (1) An authorised officer may enter relevant premises for the purposes of:
- (a) determining whether this Act has been, or is being, complied with; or
  - (b) determining whether information provided for the purposes of this Act is correct.

Note: The expression *this Act* includes the Regulatory Powers Act as it applies in relation to this Act (see the definition of *this Act* in section 12).

- (2) The authorised officer may enter the premises during the business hours of the premises.

Note: For the obligations and powers of authorised officers entering premises under this section, see Division 3.

- (3) Subdivision A of Division 2 of Part 2, and section 29, of the Regulatory Powers Act apply in accordance with Part 2 of this Chapter as if:

- (a) entry to the premises were made under section 18 of the Regulatory Powers Act under a monitoring warrant; and
- (b) for the purposes of those provisions of the Regulatory Powers Act, relevant data included information relevant to deciding whether to exercise a power under this Act.

Note 1: Subdivision A of Division 2 of Part 2, and section 29, of the Regulatory Powers Act are about monitoring powers and compensation for damage to electronic equipment operated under those powers.

Note 2: Part 2 of this Chapter expands the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act.

- (4) The application of Subdivision A of Division 2 of Part 2, and section 29, of the Regulatory Powers Act under subsection (3) of



this section is in addition to their application under Part 2 of this Chapter.

- (5) If the relevant premises are a conveyance, an authorised officer may stop and detain the conveyance for the purpose of exercising any of the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act as it applies in accordance with Part 2 of this Chapter and subsection (3) of this section.

### **347 Offence-related searches and seizures**

- (1) An authorised officer may enter relevant premises if the officer has reasonable grounds for suspecting that there may be, on the premises:
- (a) a particular thing with respect to which an offence provision or a civil penalty provision, that is a provision referred to in subsection 329(1), has been contravened or is suspected, on reasonable grounds, to have been contravened; or
  - (b) a particular thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision; or
  - (c) a particular thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision.

Note: Subsection 329(1) refers to provisions for offences against this Act, provisions for offences against the *Crimes Act 1914* or the *Criminal Code* relating to this Act and civil penalty provisions of this Act.

- (2) The authorised officer may enter the premises at any time.

Note: For the obligations and powers of authorised officers entering premises under this section, see Division 3.

- (3) Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act apply in accordance with Part 3 of this Chapter as if:
- (a) entry to the premises were made under section 48 of that Act under an investigation warrant; and

**Chapter 10** Compliance and enforcement

**Part 5** Entering and exercising powers on premises without a warrant or consent

**Division 2** Monitoring and searching relevant premises

**Section 347**

---

(b) the thing referred to in subsection (1) of this section were evidential material of a kind specified in an investigation warrant.

Note 1: Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act are about investigation powers, seizure, and compensation for damage to electronic equipment operated under investigation powers.

Note 2: Part 3 of this Chapter expands the investigation powers under Subdivision A of Division 2 of Part 3 of the Regulatory Powers Act.

- (4) The application of Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act under subsection (3) of this section is in addition to their application under Part 3 of this Chapter.
- (5) If the relevant premises are a conveyance, an authorised officer may stop and detain the conveyance for the purpose of exercising an investigation power under Division 2 of Part 3 of the Regulatory Powers Act as it applies because of Part 3 of this Chapter and subsection (3) of this section.

## **Division 3—Obligations and powers of authorised officers**

### **348 Announcement before entry**

Before an authorised officer enters relevant premises under section 346 or 347, the authorised officer must:

- (a) announce that the authorised officer is authorised to enter the premises; and
- (b) if the appropriate person for the premises is present at the premises:
  - (i) ensure that the identity card of the authorised officer is shown to the appropriate person; and
  - (ii) explain the reasons for entering the premises.

### **349 Use of force in entering premises**

In entering relevant premises under section 347, and while on those premises, an authorised officer, or a person assisting an authorised officer, may use such force against things as is necessary and reasonable in the circumstances.

## **Division 4—Appropriate person's rights and responsibilities**

### **350 Right to observe exercise of powers**

- (1) An appropriate person for relevant premises entered under section 346 or 347 is entitled to observe the exercise of powers while on the premises if the appropriate person is present at the premises while those powers are being exercised.
- (2) The right to observe the exercise of powers ceases if the appropriate person impedes the exercise of those powers.
- (3) This section does not prevent powers being exercised in 2 or more areas of the premises at the same time.

### **351 Responsibility to provide facilities and assistance**

- (1) An appropriate person for relevant premises entered under section 346 or 347 must provide the following persons with all reasonable facilities and assistance for the effective exercise of their powers while on the premises:
  - (a) any authorised officer who enters the premises;
  - (b) each person assisting the authorised officer.

#### *Fault-based offence*

- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty: 30 penalty units.

## **Part 6—Powers in emergency situations**

### **Division 1—Introduction**

#### **352 Simplified outline of this Part**

An authorised officer may, in serious and urgent circumstances, and without consent or a warrant, secure evidential material in or on certain premises or stop and search a conveyance.

## **Division 2—Powers that may be exercised in or on premises in emergency situations**

### **353 Securing evidential material without consent or warrant in emergency situation**

- (1) This section applies if an authorised officer has entered premises under:
  - (a) Part 2 of the Regulatory Powers Act, as that Part applies in relation to this Act; or
  - (b) section 346 (monitoring certain premises without consent or a warrant).
- (2) If the authorised officer reasonably suspects that:
  - (a) particular evidential material is in or on the premises; and
  - (b) it is necessary to secure the evidential material in order to prevent it from being concealed, lost or destroyed; and
  - (c) it is necessary to do so without the authority of an investigation warrant because the circumstances are serious and urgent;the authorised officer may secure the evidential material if the authorised officer finds it there pending the obtaining of an investigation warrant to seize it.

### **354 Stopping and searching conveyance without warrant in emergency situation**

- (1) This section applies if an authorised officer reasonably suspects that:
  - (a) particular evidential material is in or on a conveyance; and
  - (b) it is necessary to exercise a power under subsection (2) in order to prevent the evidential material being concealed, lost or destroyed; and

- (c) it is necessary to exercise the power without the authority of an investigation warrant because the circumstances are serious and urgent.

*Authorised officer may stop, detain and search conveyance and secure evidential material*

- (2) The authorised officer may:
  - (a) stop and detain the conveyance; and
  - (b) search the conveyance, and anything in or on the conveyance, for the evidential material; and
  - (c) secure the evidential material if the authorised officer finds it there pending the obtaining of an investigation warrant to seize it.
- (3) If, in the course of searching for the evidential material, the authorised officer finds other evidential material, the authorised officer may secure that other evidential material, pending the obtaining of an investigation warrant to seize it, if the authorised officer reasonably suspects that:
  - (a) it is necessary to secure it in order to prevent its concealment, loss or destruction; and
  - (b) it is necessary to secure it without the authority of an investigation warrant because the circumstances are serious and urgent.

*Obligations and powers of authorised officers*

- (4) In exercising a power under subsection (2) or (3) in relation to a conveyance, the authorised officer:
  - (a) must search the conveyance in a public place or in another place to which members of the public have ready access; and
  - (b) must not detain the conveyance for longer than is necessary and reasonable to search it and anything found in or on it; and
  - (c) may use such force against things as is necessary and reasonable in the circumstances.

**Chapter 10** Compliance and enforcement

**Part 6** Powers in emergency situations

**Division 2** Powers that may be exercised in or on premises in emergency situations

Section 354

---

- (5) However, the authorised officer must not damage the conveyance, or anything found in or on the conveyance, by forcing open a part of the conveyance or thing unless:
- (a) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or thing; or
  - (b) it is not possible to give that person such an opportunity.



## **Part 7—Civil penalties**

### **Division 1—Introduction**

#### **355 Simplified outline of this Part**

Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of civil penalty provisions.

## **Division 2—Civil penalties under Part 4 of the Regulatory Powers Act**

### **356 Basic operation of civil penalties under Part 4 of the Regulatory Powers Act**

#### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions referred to in subsection (1).

#### *Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each relevant court (as defined in section 12 of this Act) is a relevant court in relation to the civil penalty provisions referred to in subsection (1).

#### *Extension to external Territories*

- (4) Part 4 of the Regulatory Powers Act, as it applies in relation to a civil penalty provision referred to in subsection (1), extends to every external Territory, and each other area, to which the provision extends under subsection 8(2).

## **Part 8—Infringement notices**

### **Division 1—Introduction**

#### **358 Simplified outline of this Part**

A person may be given an infringement notice under Part 5 of the Regulatory Powers Act for contravening certain strict liability offence provisions and civil penalty provisions of this Act.

A person who is given an infringement notice may choose to pay an amount as an alternative to having court proceedings brought against the person for the contravention. If the person does not choose to pay the amount, proceedings can be brought against the person for the contravention.

## Division 2—Infringement notices under Part 5 of the Regulatory Powers Act

### 359 Basic provisions for infringement notices under Part 5 of the Regulatory Powers Act

*Provisions subject to an infringement notice*

- (1) The provisions listed in the following table are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

Provisions that are subject to an infringement notice	
Item	Provision
1	Subsection 46(4)
2	Subsection 47(4)
3	Subsection 66(3)
4	Subsection 74(3)
5	Subsection 76(2)
6	Subsection 107(3)
7	Subsection 108(2)
8	Subsection 109(2)
9	Subsection 145(3)
10	Subsection 146(2)
11	Subsection 147(3)
12	Subsection 159(4)
13	Subsection 185(3)
14	Subsection 186(2)
15	Subsection 187(3)
16	Subsection 188(3)
17	Subsection 218(3)
18	Subsection 219(2)
19	Subsection 235(3)

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**Provisions that are subject to an infringement notice**

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<b>Item</b>	<b>Provision</b>
20	Subsection 236(2)
21	Subsection 240(3)
22	Subsection 244(3)
23	Subsection 298B(3)
24	Subsection 304(3)
25	Subsection 305(5)
26	Subsection 307(3)
27	Section 316
28	Section 317
29	Section 319
30	Subsection 320(3)
31	Subsection 321(2)
32	Subsection 364D(2)
33	Subsection 374(6)
34	Subsection 378(3)
35	Subsection 408(3)
36	Subsection 417(2)

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Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

- (2) For the purposes of Part 5 of the Regulatory Powers Act:
- (a) the Secretary is an infringement officer in relation to the provisions referred to in subsection (1); and
  - (b) the Secretary is the relevant chief executive in relation to the provisions referred to in subsection (1).

*Extension to external Territories*

- (3) Part 5 of the Regulatory Powers Act, as it applies in relation to a provision referred to in subsection (1), extends to every external Territory, and each other area, to which the provision extends under subsection 8(2).

Section 360

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**360 Modifications of Part 5 of the Regulatory Powers Act**

- (1) Instead of stating the matters referred to in paragraph 104(1)(d) of the Regulatory Powers Act, an infringement notice must state the name and contact details of the person who gave the notice, and how the person has power to issue the infringement notice.

*Amount payable under the infringement notice*

- (2) The amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for the alleged contravention of the provision by the person must be the least of:
- (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
  - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate; and
  - (c) if the rules specify a different number of penalty units for the alleged contravention of the provision by the person—that number of penalty units.
- (3) Rules made for the purposes of paragraph (2)(c) may specify different numbers of penalty units for an alleged contravention of a particular provision referred to in the table in subsection 359(1) by a person depending on whether the person is an individual or a body corporate.

## **Part 9—Enforceable undertakings**

### **Division 1—Introduction**

#### **361 Simplified outline of this Part**

Undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act.

Under that Part:

- (a) the Secretary may accept an undertaking relating to compliance with a provision of this Act; and
- (b) the undertaking may be enforced in a relevant court; and
- (c) the relevant court may make orders, including an order directing compliance, an order requiring any financial benefit from the failure to comply to be surrendered and an order for damages.

**Division 2—Accepting and enforcing undertakings under  
Part 6 of the Regulatory Powers Act**

**362 Enforceable undertakings**

*Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions referred to in subsection (1).

*Relevant court*

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each relevant court (as defined in section 12 of this Act) is a relevant court in relation to the provisions referred to in subsection (1).

*Extension to external Territories*

- (4) Part 6 of the Regulatory Powers Act, as it applies in relation to a provision referred to in subsection (1), extends to every external Territory, and each other area, to which the provision extends under subsection 8(2).



## **Part 10—Injunctions**

### **Division 1—Introduction**

#### **363 Simplified outline of this Part**

Injunctions (including interim injunctions) under Part 7 of the Regulatory Powers Act may be used to restrain a person from contravening a provision of this Act, or to compel compliance with a provision of this Act.

## **Division 2—Injunctions under Part 7 of the Regulatory Powers Act**

### **364 Injunctions**

#### *Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

#### *Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions referred to in subsection (1).

#### *Relevant court*

- (3) For the purposes of Part 7 of the Regulatory Powers Act, each relevant court (as defined in section 12 of this Act) is a relevant court in relation to the provisions referred to in subsection (1).

#### *Extension to external Territories*

- (4) Part 7 of the Regulatory Powers Act, as it applies in relation to a provision referred to in subsection (1), extends to every external Territory, and each other area, to which the provision extends under subsection 8(2).

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## **Part 10A—Liability of executive officers and adverse publicity orders**

### **364A Simplified outline of this Part**

An executive officer of a body corporate may commit an offence or be liable to a civil penalty if the executive officer knew, or was reckless or negligent, about contraventions of certain provisions by the body corporate and failed to take all reasonable steps to prevent the contravention.

A body corporate must not indemnify a person against certain liabilities incurred by the person as an executive officer of the body corporate.

A relevant court may make an adverse publicity order in relation to a person who has been ordered to pay a penalty for a contravention of, or has been found guilty of an offence against, a provision of this Act.

### **364B Criminal liability for executive officers of bodies corporate**

#### *Basic contravention*

- (1) An executive officer of a body corporate commits an offence if:
  - (a) the body corporate commits an offence by contravening any of the following provisions:
    - (i) subsection 30(2);
    - (ii) subsection 33(2);
    - (iii) subsection 33(6);
    - (iv) subsection 34(2);
    - (v) subsection 37(2);
    - (vi) subsection 37(6);
    - (vii) subsection 38(2);

**Section 364B**

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- (viii) subsection 41(2);
  - (ix) subsection 41(5);
  - (x) subsection 42(2);
  - (xi) subsection 45(2);
  - (xii) subsection 45(5);
  - (xiii) subsection 46(2);
  - (xiv) subsection 47(2);
  - (xv) subsection 48(2);
  - (xvi) subsection 49(2);
  - (xvii) subsection 184(2);
  - (xviii) subsection 184(6);
  - (xix) subsection 217(2);
  - (xx) subsection 217(6);
  - (xxi) subsection 320(2);
  - (xxii) subsection 427A(2); and
- (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Contravention involving intention to obtain commercial advantage or economic consequences for Australia*

- (2) An executive officer of a body corporate commits an offence if:
  - (a) the body corporate commits an offence by contravening any of the following provisions:
    - (i) subsection 31(2);
    - (ii) subsection 32(2);
    - (iii) subsection 35(2);
    - (iv) subsection 36(2);
    - (v) subsection 39(2);

Section 364B

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- (vi) subsection 40(2);
- (vii) subsection 43(2);
- (viii) subsection 44(2); and
- (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention.

Penalty: Imprisonment for 10 years or 5,000 penalty units, or both.

*Contravention involving making false or misleading representation about non-prescribed goods that are entered for export*

- (3) An executive officer of a body corporate commits an offence if:
  - (a) the body corporate commits an offence by contravening subsection 50(2); and
  - (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Reasonable steps to prevent contravention*

- (4) For the purposes of paragraph (1)(d), (2)(d) or (3)(d), in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
  - (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

Section 364C

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- (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with the provisions referred to in paragraphs (1)(a), (2)(a) and (3)(a);
- (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
- (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with the provisions referred to in paragraphs (1)(a), (2)(a) and (3)(a) in so far as those requirements affect the employees, agents or contractors concerned;
- (iv) that the body corporate had in place adequate procedures to prevent the contravention; and
- (b) what action (if any) the officer took when the officer became aware of the contravention.

(5) Subsection (4) does not limit subsection (1), (2) or (3).

**364C Civil liability for executive officers of bodies corporate**

*Basic contravention*

- (1) An executive officer of a body corporate is liable to a civil penalty if:
  - (a) the body corporate contravenes any of the following civil penalty provisions:
    - (i) subsection 30(4);
    - (ii) subsection 33(4);
    - (iii) subsection 33(8);
    - (iv) subsection 34(4);
    - (v) subsection 37(4);
    - (vi) subsection 37(8);
    - (vii) subsection 38(4);
    - (viii) subsection 41(3);
    - (ix) subsection 41(6);

- (x) subsection 42(4);
  - (xi) subsection 45(3);
  - (xii) subsection 45(6);
  - (xiii) subsection 46(5);
  - (xiv) subsection 47(5);
  - (xv) subsection 48(4);
  - (xvi) subsection 49(4);
  - (xvii) subsection 184(4);
  - (xviii) subsection 184(8);
  - (xix) subsection 217(4);
  - (xx) subsection 217(8);
  - (xxi) subsection 320(4);
  - (xxii) subsection 427A(3); and
- (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.

Civil penalty: 960 penalty units.

*Contravention involving intention to obtain commercial advantage or economic consequences for Australia*

- (2) An executive officer of a body corporate is liable to a civil penalty if:
  - (a) the body corporate contravenes any of the following civil penalty provisions:
    - (i) subsection 31(5);
    - (ii) subsection 32(5);
    - (iii) subsection 35(5);
    - (iv) subsection 36(5);
    - (v) subsection 39(5);
    - (vi) subsection 40(5);

Section 364C

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- (vii) subsection 43(5);
- (viii) subsection 44(5); and
- (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention.

Civil penalty: 10,000 penalty units.

*Contravention involving making false or misleading representation about non-prescribed goods that are entered for export*

- (3) An executive officer of a body corporate is liable to a civil penalty if:
- (a) the body corporate contravenes subsection 50(4); and
  - (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.

Civil penalty: 600 penalty units.

*Recklessness*

- (4) For the purposes of subsection (1), (2) or (3), the executive officer was reckless as to whether the contravention would occur if:
- (a) the officer was aware of a substantial risk that the contravention would occur; and
  - (b) having regard to the circumstances known to the officer, it was unjustifiable to take the risk.



*Negligence*

- (5) For the purposes of subsection (1), (2) or (3), the executive officer was negligent as to whether the contravention would occur if the officer's conduct involved:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
  - (b) such a high risk that the contravention would occur; that the conduct merits the imposition of a pecuniary penalty.

*Reasonable steps to prevent contravention*

- (6) For the purposes of paragraph (1)(d), (2)(d) or (3)(d), in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
    - (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with the civil penalty provisions referred to in paragraphs (1)(a), (2)(a) and (3)(a);
    - (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
    - (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with the civil penalty provisions referred to in paragraphs (1)(a), (2)(a) and (3)(a) in so far as those requirements affect the employees, agents or contractors concerned;
    - (iv) that the body corporate had in place adequate procedures to prevent the contravention; and
  - (b) what action (if any) the officer took when the officer became aware of the contravention.
- (7) Subsection (6) does not limit subsection (1), (2) or (3).

Section 364D

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**364D Civil penalty—indemnification of executive officers**

- (1) A body corporate (the *first body*), or a related body corporate (within the meaning of the *Corporations Act 2001*) of the first body, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following liabilities incurred by the person as an executive officer of the first body:
  - (a) a liability to pay a penalty under section 364B or 364C;
  - (b) legal costs incurred in defending or resisting proceedings (including any related appeals) in which the person is found to have such a liability.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 25 penalty units.

**364E Certain indemnities not authorised and certain documents void**

- (1) Section 364D does not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify a person against a liability is void to the extent that it contravenes section 364D.

**364F Adverse publicity orders**

- (1) A relevant court may, on application by the Secretary, or on its own initiative, make an adverse publicity order in relation to a person who:
  - (a) has been ordered to pay a penalty for a contravention of a provision of this Act; or
  - (b) has been found guilty of an offence against a provision of this Act, whether or not the court convicts the person of the offence.

Section 364F

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- (2) A relevant court may, on application by the Director of Public Prosecutions, make an adverse publicity order in relation to a person who has been found guilty of an offence against a provision of this Act, whether or not the court convicts the person of the offence.
- (3) For the purposes of this section, an adverse publicity order in relation to a person is an order that requires the person:
- (a) to take either or both of the following actions within the period specified in the order:
    - (i) to disclose, in the way and to the persons specified in the order, details of the relevant contravention or offence, its consequences, the penalty imposed and any other related matter;
    - (ii) to publish, at the person's expense and in the way specified in the order, details of the relevant contravention or offence, its consequences, the penalty imposed and any other related matter; and
  - (b) to give the Secretary, within 14 days after the end of the period specified in the order, evidence that the action or actions were taken by the person in accordance with the order.
- (4) This section does not limit a court's powers under any other provision of this Act.

## **Part 11—Miscellaneous**

### **Division 1—Introduction**

#### **365 Simplified outline of this Part**

An authorised officer may be assisted by other persons in exercising powers and performing functions or duties under Part 4, 5 or 6 if that assistance is necessary and reasonable.

A person who makes a false or misleading statement in an application or provides false or misleading information or documents is liable to a civil penalty.

If a provision provides that a person commits an offence, or is liable to a civil penalty, for contravening another provision, special rules apply for identifying elements of the offence and for interpreting references to a contravention of the offence provision or civil penalty provision.

For the purposes of certain decisions under this Act, the Secretary must consider whether a person is a fit and proper person. Division 5 sets out the matters to which the Secretary must have regard in considering this.

Certain persons are required to notify the Secretary if they, or any of their associates, are convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty.

## **Division 2—Persons assisting authorised officers**

### **366 Persons assisting authorised officers**

*Authorised officers may be assisted by other persons*

- (1) An authorised officer may be assisted by other persons in exercising powers and performing functions or duties under Part 4, 5 or 6 if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised officer.

*Powers of a person assisting the authorised officer*

- (2) A person assisting the authorised officer:
- (a) may enter premises, if it is necessary for the authorised officer to enter those premises to exercise powers under Part 4, 5 or 6; and
  - (b) may exercise powers under those Parts for the purposes of assisting the authorised officer; and
  - (c) must enter premises and exercise powers in accordance with any direction given to the person assisting by the authorised officer.

Note 1: Premises includes a conveyance (see paragraph (a) of the definition of **premises** in section 12).

Note 2: A person assisting an authorised officer who has entered premises under section 347 may use such force against things as is necessary and reasonable in the circumstances (see section 349).

Note 3: A direction given under paragraph (2)(c) in writing is not a legislative instrument (see subsection 309(4)).

*Powers exercised in assisting an authorised officer*

- (3) A power exercised by a person in assisting an authorised officer as referred to in this section is taken for all purposes to have been exercised by the authorised officer.

### **Division 3—Civil penalty provisions for false or misleading information or documents**

#### **367 Civil penalty provision for false or misleading statements in applications**

- (1) A person is liable to a civil penalty if:
- (a) the person makes a statement (whether orally, in a document or in any other way) in, or in connection with, an application made under this Act; and
  - (b) the person does so knowing that the statement:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading.

Civil penalty: 960 penalty units.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

#### **368 Civil penalty provision for false or misleading information**

- (1) A person is liable to a civil penalty if:
- (a) the person gives information in compliance or purported compliance with this Act; and
  - (b) the person does so knowing that the information:
    - (i) is false or misleading; or

Section 369

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- (ii) omits any matter or thing without which the information is misleading.

Civil penalty: 960 penalty units.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (4) Subsection (1) does not apply if, before the information was given by a person to another person (the *official*) in compliance or purported compliance with this Act, the official did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (5) For the purposes of subsection (4), it is sufficient if the following form of words is used:

“You may be liable to a civil penalty for giving false or misleading information”.

### **369 Civil penalty provision for false or misleading documents**

- (1) A person is liable to a civil penalty if:
- (a) the person produces a document to another person; and
  - (b) the person does so knowing that the document is false or misleading; and
  - (c) the document is produced in compliance or purported compliance with this Act.

**Chapter 10** Compliance and enforcement

**Part 11** Miscellaneous

**Division 3** Civil penalty provisions for false or misleading information or documents

**Section 369**

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Civil penalty: 960 penalty units.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).



## **Division 4—General rules about offences and civil penalty provisions**

### **370 Physical elements of offences**

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct rule provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

### **371 Contravening an offence provision or a civil penalty provision**

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

## Division 5—Fit and proper person test

### 372 Fit and proper person test

- (1) This section applies for the purposes of determining whether a person is a fit and proper person for the purposes of any of the following provisions:
- (a) sections 112, 117, 123, 127 and 138 (decisions in relation to registered establishments);
  - (b) sections 151, 156, 165, 171 and 179 (decisions in relation to approved arrangements);
  - (c) sections 191, 196, 201, 205 and 212 (decisions in relation to export licences);
  - (d) any other provision of this Act prescribed by the rules.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in section 12).

- (2) Subject to subsection (4), in determining whether the person is a fit and proper person, the Secretary must have regard to the following matters:
- (a) whether the person, or an associate of the person, has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any of the following:
    - (i) this Act or the repealed *Export Control Act 1982*;
    - (ii) the *Australian Meat and Live-stock Industry Act 1997*;
    - (iii) the *Biosecurity Act 2015* or the repealed *Quarantine Act 1908*;
    - (iv) the *Imported Food Control Act 1992*;
    - (v) the *Illegal Logging Prohibition Act 2012*;
    - (vi) another Act prescribed by the rules;
    - (vii) the *Criminal Code* or the *Crimes Act 1914*, to the extent that it relates to an Act referred to in another subparagraph of this paragraph;

- (b) whether a debt is due and payable by the person, or an associate of the person, to the Commonwealth under an Act referred to in paragraph (a);
- (c) whether the person or an associate of the person:
  - (i) made a false or misleading statement in an application under this Act; or
  - (ii) gave false or misleading information or documents to the Secretary or to another person performing functions or duties or exercising powers under this Act; or
  - (iii) gave false or misleading information or documents to the Secretary or the Department under a prescribed agriculture law;
- (d) whether the person, or an associate of the person, has contravened an Act referred to in paragraph (a);
- (e) whether an application made by the person, or an associate of the person, under any of the following was refused (except in accordance with subsection 379(2)):
  - (i) section 78 or 83 (accreditation of properties);
  - (ii) section 111 or 116 (registration of establishments);
  - (iii) section 150 or 155 (approved arrangements);
  - (iv) section 190 or 195 (export licences);
  - (v) any other provision of this Act prescribed by the rules;
  - (vi) the *Australian Meat and Live-stock Industry Act 1997*;
  - (vii) the repealed *Export Control Act 1982*;
- (f) if the person, or an associate of the person, is or was the manager of an accredited property—whether the accreditation of the property:
  - (i) is or was suspended, wholly or in part, under Division 2 of Part 5 of Chapter 3; or
  - (ii) was revoked under Division 2 of Part 6 of that Chapter;
- (g) if the person, or an associate of the person, is or was the occupier of a registered establishment—whether the registration of the establishment:
  - (i) is or was suspended, wholly or in part, under Division 2 of Part 5 of Chapter 4; or

Section 372

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- (ii) was revoked under Division 2 of Part 6 of that Chapter;
  - (h) if the person, or an associate of the person, is or was the holder of an approved arrangement:
    - (i) whether the approved arrangement, or a part of the approved arrangement, is or was suspended under Division 2 of Part 5 of Chapter 5; or
    - (ii) whether the approved arrangement was revoked under Division 2 of Part 6 of that Chapter;
  - (i) whether an export licence granted to the person or an associate of the person:
    - (i) is or was suspended, wholly or in part, under Division 2 of Part 5 of Chapter 6; or
    - (ii) was revoked under Division 2 of Part 6 of that Chapter;
  - (j) any other matter prescribed by the rules.
- (3) In determining whether the person is a fit and proper person, the Secretary may also have regard to the following matters:
  - (a) whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law (other than an Act referred to in paragraph (2)(a));
  - (b) the interests of the industry, or industries, that relate to the person's export business;
  - (c) any other relevant matter.
- (4) For the purposes of determining whether a person who:
  - (a) carries out export operations, or performs functions or duties or exercises powers under this Act; and
  - (b) is prescribed by the rules;is a fit and proper person for the purposes of a provision of this Act, subsection (2) of this section applies as if the references to an associate of the person were omitted.
- (5) Rules must not be made for the purposes of paragraph (4)(b) prescribing any of the following:
  - (a) an applicant for the registration of an establishment under section 111;

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**Section 373**

- (b) the occupier of a registered establishment;
  - (c) a person who is required by rules made for the purposes of section 373 to be a fit and proper person.
- (6) Paragraphs (2)(e) to (i) do not apply in relation to a refusal, or a suspension or revocation, if the decision to refuse, suspend or revoke was set aside on review.
- (7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**373 Rules may prescribe kinds of persons that are required to be fit and proper persons for the purposes of Chapter 5 or 6**

- (1) The rules may prescribe kinds of persons who are required, for the purposes of Chapter 5 (approved arrangements) or Chapter 6 (export licences), to be fit and proper persons (having regard to the matters referred to in section 372).
- (2) Without limiting subsection (1), the rules may prescribe kinds of persons by reference to a kind of export operations carried out, or to be carried out, by persons of that kind in accordance with an approved arrangement or under an export licence (as the case requires).

**374 Notification of conviction of offence or order to pay pecuniary penalty**

- (1) This section applies to the following persons:
- (a) an applicant for the accreditation of a property under section 78;
  - (b) the manager of an accredited property;
  - (c) an applicant for the registration of an establishment under section 111, and any other person who manages or controls,

**Section 374**

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- or would manage or control, export operations carried out in relation to prescribed goods at the establishment;
- (d) the occupier of a registered establishment, and any other person who manages or controls export operations carried out in relation to prescribed goods at the establishment;
- (e) subject to subsection (2), each of the following:
- (i) an applicant for approval of a proposed arrangement under section 150, and any other person who is to manage or control or carry out export operations covered by the proposed arrangement;
  - (ii) the holder of an approved arrangement;
  - (iii) a person who manages or controls or carries out export operations covered by an approved arrangement;
- (f) subject to subsection (3), each of the following:
- (i) an applicant for an export licence under section 190, and a person who participates or would participate in the management or control of the applicant's export business or proposed export business (as provided by section 220);
  - (ii) the holder of an export licence;
  - (iii) a person who participates or would participate in the management or control of the applicant's export business or proposed export business (as provided by section 220);
- (g) any other person who carries out export operations, or performs functions or duties or exercises powers under this Act, and is prescribed by the rules.
- (2) This section applies to a person referred to in a subparagraph of paragraph (1)(e) only if the person is a kind of person who is required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of Chapter 5 (approved arrangements).
- (3) This section applies to a person referred to in a subparagraph of paragraph (1)(f) only if the person is a kind of person who is

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Section 374

required by rules made for the purposes of section 373 to be a fit and proper person for the purposes of Chapter 6 (export licences).

- (4) If a person to whom this section applies is convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Secretary, in writing, of the conviction or order as soon as practicable after the person is convicted or the order is made.
- (5) If a person to whom this section applies becomes aware that an associate of the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Secretary, in writing, of the conviction or order as soon as practicable after the person becomes aware of the conviction or order.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if:
- (a) the person is required to notify the Secretary of a conviction or order under subsection (4) or (5); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

- (7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## **Chapter 11—Miscellaneous**

### **Part 1—Matters relating to applications**

#### **Division 1—Introduction**

##### **375 Simplified outline of this Part**

This Part sets out matters relating to applications under Chapter 3 (accredited properties), Chapter 4 (registered establishments), Chapter 5 (approved arrangements) and Chapter 6 (export licences).

An application must comply with certain requirements.

A person who has made an application must give the Secretary additional or corrected information in certain circumstances.

The Secretary must make a decision in relation to an application within the relevant consideration period and may exercise certain powers in relation to the application.



## **Division 2—Matters relating to certain applications**

### **376 Applications to which this Division applies**

- (1) This Division applies in relation to an application under any of the following:
  - (a) Part 2 or 3 or Division 1 of Part 4 of Chapter 3 (accredited properties);
  - (b) Part 2 or 3 or Division 1 of Part 4 of Chapter 4 (registered establishments);
  - (c) Part 2 or 3 or Subdivision B of Division 1 of Part 4 of Chapter 5 (approved arrangements);
  - (d) Part 2 or 3 or Division 1 of Part 4 of Chapter 6 (export licences).
- (2) Section 379 applies in relation to an application that is taken to have been made under subsection 166(2) to approve a varied approved arrangement.

### **377 Requirements for applications**

- (1) An application must:
  - (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and
  - (c) include the information (if any) prescribed by the rules; and
  - (d) be accompanied by any documents prescribed by the rules.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

**Chapter 11** Miscellaneous

**Part 1** Matters relating to applications

**Division 2** Matters relating to certain applications

**Section 378**

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- (2) If the application is to approve a proposed arrangement, to renew an approved arrangement or to approve a proposed varied arrangement under Chapter 5, the proposed arrangement, approved arrangement or proposed varied arrangement must:
  - (a) accompany the application; or
  - (b) otherwise be made available to the Secretary for evaluation.
- (3) The Secretary may accept any information or document previously given to the Secretary in connection with an application made under this Act, or a notice of intention to export a consignment of prescribed goods given under this Act, as satisfying any requirement to give that information or document under subsection (1).
- (4) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (1) or (2) for the application.
- (5) To avoid doubt, the Secretary may approve:
  - (a) different forms for applications relating to different kinds of establishments, properties, export operations or prescribed goods; or
  - (b) a single form for more than one kind of application.

**378 Additional or corrected information**

- (1) A person who has made an application to which this Division applies must comply with subsection (2) if:
  - (a) the person becomes aware that information included in the application, or information or a document given to the Secretary in relation to the application, was incomplete or incorrect; or
  - (b) a change prescribed by the rules occurs.
- (2) The person must, as soon as practicable, give the Secretary additional or corrected information, to the extent that it is relevant to the Secretary's consideration of the application.

Note 1: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

Note 2: This section is not subject to the privilege against self-incrimination (see section 426).

*Civil penalty provision*

- (3) A person is liable to a civil penalty if:
- (a) the person is required to give information to the Secretary under subsection (2); and
  - (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

### **379 Dealing with applications**

*Period within which decision must be made*

- (1) The Secretary must make a decision in relation to an application to which this Division applies (the **relevant application**) within the consideration period for the application if:
- (a) the application complies with the requirements referred to in subsections 377(1) and (2) for the application; and
  - (b) the application has not been withdrawn.

Note: An application that does not comply with the requirements referred to in subsection 377(1) or (2) for the application is taken not to have been made (see subsection 377(4)).

- (2) If the Secretary does not make a decision in relation to the relevant application within the consideration period for the application, the Secretary is taken to have refused the application at the end of that period.

*Consideration period—general*

- (3) The **consideration period** for the relevant application is the period (the **initial consideration period**) prescribed by the rules for an

**Chapter 11** Miscellaneous

**Part 1** Matters relating to applications

**Division 2** Matters relating to certain applications

Section 379

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application of that kind, as extended under subsection (5), (6), (7) or (8).

- (4) The consideration period for the relevant application starts on the day after the day the Secretary receives the application.
- (5) The initial consideration period for the relevant application is extended:
  - (a) for each request made under paragraph (9)(a), (b), (c) or (e)—by the number of days in the period starting on the day the request was made and ending on:
    - (i) the day the request was complied with; or
    - (ii) if the request was not complied with within the period specified in the request—the last day of that period; and
  - (b) for each thing referred to in paragraph (9)(b) that is done—by the number of days in the period during which the thing was done; and
  - (c) for each test or analysis of samples taken under subparagraph (9)(b)(iv)—by the number of days in the period during which the testing or analysis was carried out; and
  - (d) for each thing done under paragraph (9)(f)—by the number of days in the period during which the thing was done; and
  - (e) for any other reason prescribed by the rules—by the number of days in the period prescribed by the rules in relation to that reason.

*Consideration period—related applications*

- (6) If:
  - (a) the Secretary receives:
    - (i) an application under section 111 to register an establishment for a kind of export operations in relation to a kind of prescribed goods; and
    - (ii) an application under section 150 to approve a proposed arrangement for the same kind of export operations in relation to the same kind of prescribed goods; and
  - (b) either:

- (i) the applications are received at the same time (whether or not they are made using a single approved form); or
- (ii) the applications are not received at the same time but the second application is received before the end of the consideration period for the first application;

then, if the initial consideration period for either of the applications is extended for a period under subsection (5), the initial consideration period for the other application is also extended for that period.

(7) If:

(a) the Secretary receives:

- (i) an application under section 116 to renew the registration of an establishment for a kind of export operations in relation to a kind of prescribed goods; and
- (ii) an application under section 155 to renew an approved arrangement covering the same kind of export operations in relation to the same kind of prescribed goods; and

(b) either:

- (i) the applications are received at the same time (whether or not they are made using a single approved form); or
- (ii) the applications are not received at the same time but the second application is received before the end of the consideration period for the first application;

then, if the initial consideration period for either of the applications is extended for a period under subsection (5), the initial consideration period for the other application is also extended for that period.

(8) If:

(a) the Secretary receives:

- (i) an application under section 120 to make a variation in relation to the registration of an establishment or approve an alteration of an establishment; and
- (ii) an application under section 161 to approve a variation of an approved arrangement, or the conditions of an

Section 379

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approved arrangement, covering export operations carried out at the establishment to which the application referred to in subparagraph (i) applies; and

- (b) either:
- (i) the applications are received at the same time (whether or not they are made using a single approved form); or
  - (ii) the applications are not received at the same time but the second application is received before the end of the consideration period for the first application;

then, if the initial consideration period for either of the applications is extended for a period under subsection (5), the initial consideration period for the other application is also extended for that period.

*Powers of Secretary*

- (9) The Secretary may do any of the following in relation to the relevant application:
- (a) request the applicant, or another person who the Secretary considers may have information or documents relevant to the application or the applicant, to give the Secretary further specified information or documents relevant to the application or the applicant;
  - (b) request consent to enter premises of the applicant or of another person to do any of the following things:
    - (i) assess the suitability of the premises and equipment and facilities on the premises for carrying out the export operations to which the application relates;
    - (ii) inspect, examine or evaluate export operations or other operations carried out on the premises;
    - (iii) view a demonstration of export operations or other operations carried out on the premises;
    - (iv) take samples of goods, or from equipment used in export operations or other operations, on the premises;
    - (v) take photographs of goods, or of equipment used in export operations or other operations, on the premises;

- (c) request consent to allow a person with appropriate qualifications or expertise to assist the Secretary in doing a thing under paragraph (b);
- (d) test or analyse any samples taken under subparagraph (b)(iv);
- (e) request another person with appropriate qualifications or expertise to test or analyse any samples taken under subparagraph (b)(iv);
- (f) any other thing prescribed by the rules.

Note: See Division 2 of Part 6 of this Chapter in relation to taking, testing and analysing samples.

- (10) A request under subsection (9) must:
- (a) be in writing; and
  - (b) specify the period (which must not be longer than the period prescribed by the rules) within which the request must be complied with.

## **Part 1A—Alternative regulatory arrangements**

### **Division 1—Introduction**

#### **379A Simplified outline of this Part**

The Secretary may, on application by a person, approve an alternative regulatory arrangement in relation to a kind of export operations and a kind of prescribed goods.

A variation of an approved arrangement may be needed to implement an approved alternative regulatory arrangement in relation to a kind of export operations and a kind of prescribed goods.



## **Division 2—Alternative regulatory arrangements**

### **379B Application to approve alternative regulatory arrangement**

- (1) A person may apply to the Secretary to approve a procedure, standard or other requirement (an ***alternative regulatory arrangement***) in relation to a kind of export operations and a kind of prescribed goods if:
- (a) the alternative regulatory arrangement is different from a requirement of this Act, or an industry standard or practice, that applies in relation to that kind of export operations and that kind of prescribed goods; and
  - (b) carrying out that kind of export operations in relation to that kind of prescribed goods in accordance with the alternative regulatory arrangement will:
    - (i) achieve the same purpose as the requirement of this Act, or the industry standard or practice, referred to in paragraph (a); and
    - (ii) ensure the integrity of that kind of goods; and
    - (iii) ensure that importing country requirements relating to that kind of export operations and that kind of goods will be met.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of ***this Act*** in section 12).

- (2) An application must:
- (a) if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
  - (b) if the Secretary has approved a form for making an application:
    - (i) include the information required by the form; and
    - (ii) be accompanied by any documents required by the form; and
  - (c) include the information (if any) prescribed by the rules; and
  - (d) be accompanied by any documents prescribed by the rules.

**Section 379C**

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Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and sections 367, 368 and 369 of this Act).

- (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (2).

**379C Secretary must decide whether to approve alternative regulatory arrangement**

- (1) On receiving an application made under subsection 379B(1) to approve an alternative regulatory arrangement in relation to a kind of export operations and a kind of prescribed goods, the Secretary must decide:
- (a) to approve the alternative regulatory arrangement; or
  - (b) to refuse to approve the alternative regulatory arrangement.

Note: An application that does not comply with the requirements referred to in subsection 379B(2) for the application is taken not to have been made (see subsection 379B(3)).

- (2) The Secretary may approve the alternative regulatory arrangement in relation to the kind of export operations and the kind of prescribed goods if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that:
- (a) carrying out that kind of export operations in relation to that kind of prescribed goods in accordance with the alternative regulatory arrangement will:
    - (i) achieve the same purpose as a requirement of this Act, or an industry standard or practice, that applies in relation to that kind of export operations and that kind of goods; and
    - (ii) ensure the integrity of that kind of goods; and
    - (iii) ensure that importing country requirements relating to that kind of export operations and that kind of goods will be met; and

(b) any other requirement prescribed by the rules is met.

Note: A variation of an approved arrangement may be needed to implement an alternative regulatory arrangement that has been approved under paragraph (1)(a). See Subdivision B of Division 1 of Part 4 of Chapter 5.

*Notice of decision*

- (3) The Secretary must notify the applicant, in writing, of the Secretary's decision. If the decision is a refusal, the notice must include the reasons for the decision.

## **Part 2—Review of decisions**

### **Division 1—Introduction**

#### **380 Simplified outline of this Part**

Certain decisions under this Act may be reviewed internally and by the Administrative Appeals Tribunal.

## Division 2—Review of decisions

### 381 Reviewable decisions

(1) Each of the decisions referred to in column 1 of the following table is a *reviewable decision*:

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
1	To refuse to accredit a property for any of the following: (a) a kind of export operations; (b) a kind of prescribed goods; (c) a specified place to which goods may be exported	Paragraph 79(1)(b)	The manager of the property
2	To set an expiry date for the accreditation of a property	Subsection 79(4)	The manager of the property
3	To accredit a property subject to additional conditions	Paragraph 80(1)(c)	The manager of the property
4	To refuse to renew the accreditation of a property	Paragraph 84(1)(b)	The manager of the property
5	To set an expiry date for the renewed accreditation of a property	Subsection 84(3)	The manager of the property

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
6	To renew the accreditation of a property subject to additional conditions	Paragraph 85(c)	The manager of the property
7	To refuse to make a variation or give an approval in relation to the accreditation of a property	Paragraph 87(2)(b)	The manager of the property
8	To vary an aspect of the accreditation of a property	Paragraph 90(1)(a)	The manager of the property
9	To vary the conditions of the accreditation of a property	Paragraph 90(1)(b)	The manager of the property
10	To set an expiry date for the accreditation of a property	Paragraph 90(1)(c)	The manager of the property
11	To set an earlier expiry date for the accreditation of a property	Paragraph 90(1)(d)	The manager of the property
12	To suspend the accreditation of a property wholly or in part	Subsection 94(1)	The manager of the property
13	To suspend the accreditation of a property due to an overdue relevant Commonwealth liability	Subsection 95(1)	The manager of the property

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
14	To extend the period of a suspension of the accreditation of a property	Subsection 97(2)	The manager of the property
15	To revoke the accreditation of a property	Subsection 102(1)	The manager of the property
16	To revoke the accreditation of a property due to an overdue relevant Commonwealth liability	Subsection 103(1)	The manager of the property
17	To refuse to register an establishment for any of the following: (a) a kind of export operations; (b) a kind of prescribed goods; (c) a specified place to which goods may be exported	Paragraph 112(1)(b)	The occupier of the establishment
18	To set an expiry date for the registration of an establishment	Subsection 112(3)	The occupier of the establishment
19	To register an establishment subject to additional conditions	Paragraph 113(1)(c)	The occupier of the establishment
20	To refuse to renew the registration of an establishment	Paragraph 117(1)(b)	The occupier of the establishment

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
21	To set an expiry date for the renewed registration of an establishment	Subsection 117(3)	The occupier of the establishment
22	To renew the registration of an establishment subject to additional conditions	Paragraph 118(c)	The occupier of the establishment
23	To refuse to make a variation or approve an alteration in relation to the registration of an establishment	Paragraph 120(2)(b)	The occupier of the establishment
24	To vary an aspect of the registration of an establishment	Paragraph 123(1)(a)	The occupier of the establishment
25	To vary the conditions of the registration of an establishment	Paragraph 123(1)(b)	The occupier of the establishment
26	To set an expiry date for the registration of an establishment	Paragraph 123(1)(c)	The occupier of the establishment
27	To set an earlier expiry date for the registration of an establishment	Paragraph 123(1)(d)	The occupier of the establishment
28	To suspend the registration of an establishment wholly or in part	Subsection 127(1)	The occupier of the establishment
29	To suspend the registration of an establishment due to an	Subsection 128(1)	The occupier of the establishment



Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
	overdue relevant Commonwealth liability		
30	To extend the period of a suspension of the registration of an establishment	Subsection 130(2)	The occupier of the establishment
31	To revoke the registration of an establishment	Subsection 138(1)	The occupier of the establishment
32	To revoke the registration of an establishment due to an overdue relevant Commonwealth liability	Subsection 139(1)	The occupier of the establishment
33	To refuse to approve a proposed arrangement	Paragraph 151(1)(b)	The person who applied for the approval
34	To set an expiry date for an approved arrangement	Subsection 151(3)	The person who applied for the approval
35	To approve a proposed arrangement subject to additional conditions	Paragraph 152(1)(c)	The person who applied for the approval
36	To refuse to renew an approved arrangement	Paragraph 156(1)(b)	The holder of the approved arrangement
37	To set an expiry date for a renewed approved arrangement	Subsection 156(3)	The holder of the approved arrangement
38	To renew an approved arrangement subject to	Paragraph 157(1)(c)	The holder of the approved arrangement

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
	additional conditions		
39	To refuse to approve a variation of an approved arrangement or to vary conditions of an approved arrangement	Paragraph 161(2)(b)	The holder of the approved arrangement
40	To require an aspect of an approved arrangement to be varied	Paragraph 165(1)(a)	The holder of the approved arrangement
41	To vary the conditions of an approved arrangement	Paragraph 165(1)(b)	The holder of the approved arrangement
42	To set an expiry date for an approved arrangement	Paragraph 165(1)(c)	The holder of the approved arrangement
43	To set an earlier expiry date for an approved arrangement	Paragraph 165(1)(d)	The holder of the approved arrangement
44	To refuse to approve a varied approved arrangement	Paragraph 166(3)(b)	The holder of the approved arrangement
45	To approve a varied approved arrangement subject to conditions	Subsection 166(5)	The holder of the approved arrangement
46	To suspend an approved arrangement or a part of an approved arrangement	Subsection 171(1)	The holder of the approved arrangement
47	To suspend an approved arrangement	Subsection 172(1)	The holder of the approved arrangement

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
	due to an overdue relevant Commonwealth liability		
48	To extend the period of a suspension of an approved arrangement or a part of an approved arrangement	Subsection 174(2)	The holder of the approved arrangement
49	To revoke an approved arrangement	Subsection 179(1)	The holder of the approved arrangement
50	To revoke an approved arrangement due to an overdue relevant Commonwealth liability	Subsection 180(1)	The holder of the approved arrangement
51	To refuse to grant an export licence in relation to any of the following: (a) a kind of export operations; (b) a kind of prescribed goods; (c) a specified place to which goods may be exported	Paragraph 191(1)(b)	The person who applied for the export licence
52	To set an expiry date for an export licence	Subsection 191(3)	The person who applied for the export licence
53	To grant an export licence subject to	Paragraph 192(1)(c)	The person who applied for the export

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
	additional conditions		licence
54	To refuse to renew an export licence	Paragraph 196(1)(b)	The holder of the export licence
55	To set an expiry date for a renewed export licence	Subsection 196(3)	The holder of the export licence
56	To renew an export licence subject to additional conditions	Paragraph 197(1)(c)	The holder of the export licence
57	To refuse to make a variation in relation to an export licence	Paragraph 199(2)(b)	The holder of the export licence
58	To vary an aspect of an export licence	Paragraph 201(1)(a)	The holder of the export licence
59	To vary the conditions of an export licence	Paragraph 201(1)(b)	The holder of the export licence
60	To set an expiry date for an export licence	Paragraph 201(1)(c)	The holder of the export licence
61	To set an earlier expiry date for an export licence	Paragraph 201(1)(d)	The holder of the export licence
62	To suspend an export licence wholly or in part	Subsection 205(1)	The holder of the export licence
63	To suspend an export licence due to an overdue relevant Commonwealth liability	Subsection 206(1)	The holder of the export licence
64	To extend the period of a suspension of an	Subsection 208(2)	The holder of the export licence

Section 381

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
	export licence		
65	To revoke an export licence	Subsection 212(1)	The holder of the export licence
66	To revoke an export licence due to an overdue relevant Commonwealth liability	Subsection 213(1)	The holder of the export licence
67	To refuse to authorise a person to be a third party authorised officer	Paragraph 291(6)(b)	The person to whom the decision relates
68	To authorise a person to be a third party authorised officer subject to additional conditions	Paragraph 292(1)(b)	The third party authorised officer
69	To vary the functions or powers that a third party authorised officer may perform or exercise	Paragraph 295(1)(a)	The third party authorised officer
70	To vary the conditions to which the authorisation of a person as a third party authorised officer is subject	Paragraph 295(1)(b)	The third party authorised officer
71	To shorten the period of effect of the authorisation of a person as a third party authorised officer	Paragraph 295(1)(c)	The third party authorised officer

Section 381

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<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Reviewable decision</b>	<b>Column 2 Provision under which the reviewable decision is made</b>	<b>Column 3 Relevant person for the reviewable decision</b>
72	To specify a period of effect of the authorisation of a person as a third party authorised officer	Paragraph 295(1)(d)	The third party authorised officer
73	To suspend the authorisation of a person as a third party authorised officer	Subsection 296(1)	The third party authorised officer
74	To extend the period of a suspension of the authorisation of a person as a third party authorised officer	Subsection 296(4)	The third party authorised officer
75	To revoke the authorisation of a person as a third party authorised officer	Subsection 297(1)	The third party authorised officer
76	To refuse to make a variation in relation to a person's authorisation as a third party authorised officer	Paragraph 298A(4)(b)	The third party authorised officer

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(2) The rules may also:

- (a) provide that a decision made under a specified provision of this Act is a **reviewable decision**; and
- (b) specify the relevant person for the reviewable decision.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of **this Act** in section 12).

### **382 Notice of decision**

- (1) After a reviewable decision is made, the person who made the decision must give a written notice to the relevant person for the decision stating the following:
  - (a) the terms of the decision;
  - (b) the reasons for the decision;
  - (c) information about the person's right to have the decision reviewed.

However, a failure to give the notice required by this section does not affect the validity of the decision.

- (2) This section does not affect any requirement to give notice of a reviewable decision under another provision of this Act.

### **383 Internal review of reviewable decisions**

#### *Application for review*

- (1) A relevant person for a reviewable decision may apply to the Secretary for review of the decision, unless the decision was made by the Secretary personally.

Note: See section 385 for review of a decision made personally.

- (2) An application for review must:
  - (a) be in writing; and
  - (b) set out the reasons for the application; and
  - (c) be made within:
    - (i) 30 days after the day the reviewable decision first came to the notice of the applicant; or
    - (ii) if the Secretary allows a longer period (whether before or after the end of the 30-day period referred to in subparagraph (i))—that longer period.

Note: Under section 384, the Secretary may require further information in relation to an application.

Section 383

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*Review of decision*

- (3) On receiving an application, the Secretary must either:
- (a) review the reviewable decision personally; or
  - (b) cause the reviewable decision to be reviewed by a person (the **internal reviewer**) who:
    - (i) is a person to whom the Secretary's power to review the decision has been delegated; and
    - (ii) was not involved in making the decision; and
    - (iii) occupies a position senior to the person who actually made the decision.
- (4) The Secretary or the internal reviewer may:
- (a) affirm, vary or set aside the reviewable decision; and
  - (b) if the Secretary or the internal reviewer sets aside the reviewable decision—make such other decision as the Secretary or the internal reviewer thinks appropriate.

Note: The rules may prescribe modifications of this subsection in its application in relation to reviewable decisions relating to tariff rate quota entitlements (see section 386).

- (5) The decision (the **decision on review**) of the Secretary or the internal reviewer takes effect:
- (a) on the day specified in the decision on review; or
  - (b) if a day is not specified—on the day the decision on review was made.

*Notice of decision*

- (6) After the Secretary or the internal reviewer makes a decision under this section, the Secretary or the internal reviewer must give the applicant a written notice stating the following:
- (a) the terms of the decision;
  - (b) the reasons for the decision;
  - (c) information about the applicant's right to have the decision reviewed by the Administrative Appeals Tribunal.



However, a failure to comply with this subsection does not affect the validity of the decision.

*Failure to give notice*

- (7) For the purposes of section 385 (review by the Administrative Appeals Tribunal), the Secretary is taken to have affirmed a reviewable decision if the applicant does not receive notice of the decision on review (if any) within 90 days after the application for review was made.

**384 Secretary may require further information from applicants**

- (1) The Secretary may, by written notice, require a person who has made an application under section 383 to give the Secretary further information about the application.
- (2) The Secretary may refuse to consider the application until the person gives the Secretary the information.

**385 Review by the Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) a reviewable decision made by the Secretary personally; or
  - (b) a decision of the Secretary, or an internal reviewer, under section 383 that relates to a reviewable decision.
- (2) An application under subsection (1) may be made only by, or on behalf of, the relevant person for the reviewable decision referred to in paragraph (1)(a) or (b).
- (3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

Note: The rules may prescribe modifications of subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* in its application in relation to reviews of decisions relating to tariff rate quota entitlements (see section 386).

Section 386

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**386 Review of decisions relating to tariff rate quota entitlements**

- (1) The rules may prescribe modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements.

Note: See Part 4 of Chapter 8 in relation to tariff rate quota entitlements.

- (2) If the rules prescribe modifications of subsection 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements, then that subsection has effect as so modified in relation to reviewable decisions of that kind.

- (3) The rules may prescribe modifications of subsection 43(1) of the *Administrative Appeals Tribunal Act 1975* in its application in relation to reviews of decisions relating to tariff rate quota entitlements.

Note: If the rules prescribe modifications of subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, then that subsection has effect in relation to applications for review referred to in subsection 385(1) of this Act subject to those modifications (see subsection 25(6) of the *Administrative Appeals Tribunal Act 1975*).

- (4) The rules may prescribe modifications for the purposes of subsection (1) or (3) only for the purpose of ensuring that tariff rate quota amounts are not exceeded.

## **Part 3—Confidentiality of information**

### **Division 1—Introduction**

#### **387 Simplified outline of this Part**

Information (called protected information) may be obtained under, or in accordance with, this Act. Protected information may be used or disclosed in certain circumstances.

A person who obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under this Act may commit an offence if the person uses or discloses the information other than in certain circumstances.

## Division 2—Authorised uses and disclosures

### 388 Authorisation to use or disclose protected information in performing functions or exercising powers under this Act

A person who obtains protected information may use or disclose the information in performing functions or duties or exercising powers under this Act.

Note 1: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Note 2: Use, in relation to information, includes make a record of (see the definition of *use* in section 12).

### 389 Authorisation to use or disclose certain protected information for secondary permissible purposes

- (1) A person who obtains protected information (other than protected information in relation to which section 391 applies) in the course of, or for the purposes of, performing functions or duties or exercising powers under this Act may use or disclose the information for a secondary permissible purpose if:
- (a) the person considers it is appropriate to do so; and
  - (b) in relation to a disclosure—the disclosure is to:
    - (i) an officer or employee of the Commonwealth or a State or Territory; or
    - (ii) an officer or employee of a Commonwealth body or a State or Territory body.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (2) A person to whom protected information is disclosed under subsection (1) may use or disclose the information for the purposes for which the information was disclosed under that subsection.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

**390 Secretary may authorise use or disclosure of certain protected information for secondary permissible purposes**

- (1) If the Secretary considers it is appropriate to do so, the Secretary may, in writing, authorise a person:
- (a) to use protected information (other than protected information in relation to which section 391 applies) for a secondary permissible purpose that is specified in the authorisation; or
  - (b) to disclose to a specified person, or to a specified class of persons, protected information (other than protected information in relation to which section 391 applies) for a secondary permissible purpose that is specified in the authorisation.

Example: The Secretary could, under this subsection, authorise a person to disclose certain protected information to:

- (a) a third party authorised officer; or
- (b) an accredited veterinarian; or
- (c) a body that is authorised to perform functions or exercise powers in relation to the health and welfare of animals or the health and condition of animal reproductive material under an Australian law.

- (2) A person who is authorised to use or disclose protected information under subsection (1) may use or disclose the information in accordance with the authorisation.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (3) A person to whom protected information is disclosed under subsection (2) may use or disclose the information for the purposes for which the information was disclosed under that subsection.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Section 391

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**391 Authorisation to use or disclose sensitive information or certain other protected information for secondary permissible purposes**

*Application of this section*

- (1) This section applies in relation to protected information that is:
  - (a) sensitive information; or
  - (b) information obtained by a person in performing functions or duties or exercising powers under Chapter 10 (compliance and enforcement) or the Regulatory Powers Act.

Note: For *sensitive information*, see section 12.

*Secretary may authorise use or disclosure of information for secondary permissible purposes*

- (2) If the Secretary considers it is appropriate to do so, the Secretary may, in writing, authorise a person:
  - (a) to use protected information to which this section applies for a secondary permissible purpose that is specified in the authorisation; or
  - (b) to disclose to a specified person, or to a specified class of persons, protected information to which this section applies for a secondary permissible purpose that is specified in the authorisation.
- (3) The Secretary must not, under paragraph (2)(b), authorise the disclosure of information to a person other than:
  - (a) an officer or employee of the Commonwealth or a State or Territory; or
  - (b) an officer or employee of a Commonwealth body or a State or Territory body; or
  - (c) a third party authorised officer.
- (4) A person who is authorised to use or disclose protected information under subsection (2) may use or disclose the information in accordance with the authorisation.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (5) A person to whom protected information is disclosed under subsection (4) may use or disclose the information for the purposes for which the information was disclosed under that subsection.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

### **392 Authorisation to use or disclose protected information for purposes of proceedings**

A person who obtains protected information may disclose the information:

- (a) to a court or tribunal, or in accordance with an order of a court or tribunal, for the purposes of proceedings; or
- (b) to a coronial inquiry, or in accordance with an order of a coroner, for the purposes of a coronial inquiry.

Note 1: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

Note 2: The *National Security Information (Criminal and Civil Proceedings) Act 2004* may apply to proceedings under this Division.

### **393 Authorisation to use or disclose protected information for purposes of enforcement-related activity**

- (1) A person who obtains protected information may use the information, or disclose the information to an enforcement body, if the person reasonably believes that the use or disclosure is reasonably necessary for, or directly related to, one or more enforcement-related activities being conducted by, or on behalf of, that enforcement body.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (2) An enforcement body to which protected information is disclosed under subsection (1) may use or disclose the information for the purposes of conducting one or more enforcement-related activities.

Section 394

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Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

**394 Authorisation to use or disclose protected information if required by another Australian law**

A person who obtains protected information may use or disclose the information if the use or disclosure is required under an Australian law other than this Act.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

**395 Authorisation to disclose protected information to person to whom information relates, or to use or disclose protected information with consent**

- (1) A person who obtains protected information may disclose the information to the person to whom the information relates.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

- (2) A person (the *first person*) who obtains protected information may use or disclose the information for a purpose if the person to whom the information relates has expressly consented to the first person using or disclosing the information for that purpose.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

**396 Authorisation to disclose protected information to person who provided information**

A person who obtains protected information may disclose the information to the person who provided the information.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).



## **Division 3—Offences**

### **397 Unauthorised use or disclosure of protected information**

*Fault-based offence*

- (1) A person commits an offence if:
- (a) the person obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under this Act; and
  - (b) the person uses or discloses the information; and
  - (c) the use or disclosure is not authorised by a provision in Division 2.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Exception for use or disclosure in good faith*

- (2) Subsection (1) does not apply to a person to the extent that the person uses or discloses protected information in good faith and in purported compliance with a provision in Division 2.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

## Part 4—Cost recovery

### Division 1—Introduction

#### 398 Simplified outline of this Part

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 this Act.

A fee must not be such as to amount to taxation.

The time for paying a cost-recovery charge and the person who is liable to pay the cost-recovery charge are as prescribed by the rules.

If a cost-recovery charge is not paid at or before the time it is due and payable, a late payment fee may also be payable.

A cost-recovery charge that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

The Secretary may remit or refund a cost-recovery charge in certain circumstances.

The Secretary may refuse to carry out, or direct a person not to carry out, activities in relation to a person who is liable to pay a cost-recovery charge that is due and payable.

## **Division 2—Fees**

### **399 Fees and other rules for fee-bearing activities**

- (1) The rules may prescribe fees that may be charged in relation to activities (*fee-bearing activities*) carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

Note: Fees may also be charged by the following:

- (a) certain issuing bodies (see section 64);
  - (b) approved auditors (see section 275);
  - (c) approved assessors (see section 283);
  - (d) State or Territory authorised officers and third party authorised officers (see section 303).
- (2) Without limiting subsection (1), the rules may specify that the amount of a fee is the cost incurred by the Commonwealth in arranging and paying for another person to carry out the relevant fee-bearing activity.
- (3) A fee prescribed under subsection (1) must not be such as to amount to taxation.
- (4) The rules may also make provision for and in relation to either or both of the following:
- (a) deposits to be paid in relation to fee-bearing activities;
  - (b) fees to be paid in relation to specified applications.

## Division 3—Payment of cost-recovery charges

### 400 Paying cost-recovery charges

The rules may:

- (a) prescribe the time when a specified cost-recovery charge is due and payable; and
- (b) prescribe rules relating to:
  - (i) the liability of a person's agent to pay cost-recovery charges on behalf of the person; and
  - (ii) the recovery of such cost-recovery charges from the person by the agent.

### 401 Person liable to pay cost-recovery charges

The rules may prescribe one or more persons who are liable to pay a specified cost-recovery charge.

### 402 Notional payments by the Commonwealth

- (1) The Minister administering the *Public Governance, Performance and Accountability Act 2013* may give written directions for the purpose of ensuring that cost-recovery charges are notionally payable by the Commonwealth (or parts of the Commonwealth).

Note: For notional payments and receipts, see section 76 of that Act.

- (2) A direction given under subsection (1) is not a legislative instrument.

## **Division 4—Unpaid cost-recovery charges**

### **403 Late payment fee**

- (1) If the rules specify the time when a cost-recovery charge (the *basic charge*) is due and payable, the rules may also specify a fee (a *late payment fee*) that is due and payable if the basic charge is not paid at or before that time.
- (2) Without limiting subsection (1), a late payment fee may relate to each day or part of a day that the basic charge remains unpaid after becoming due and payable.
- (3) The rules may prescribe one or more persons who are liable to pay a late payment fee in relation to a cost-recovery charge referred to in paragraph (a) or (b) of the definition of *cost-recovery charge* in section 12.

### **404 Recovery of cost-recovery charges**

A cost-recovery charge that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

## Division 5—Miscellaneous

### 405 Secretary may remit or refund cost-recovery charges

- (1) The Secretary may remit or refund the whole or part of a cost-recovery charge that is payable, or that has been paid, to the Commonwealth if the Secretary is satisfied there are circumstances that justify doing so.
- (2) The Secretary may do so on the Secretary's own initiative or on written application by a person.

### 406 Secretary may direct that activities not be carried out

If a person (the *debtor*) is liable to pay a cost-recovery charge that is due and payable, the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the cost-recovery charge has been paid.

## **Part 5—Records**

### **Division 1—Introduction**

#### **407 Simplified outline of this Part**

The rules may require records to be retained by certain persons, including:

- (a) persons who carry out, or have carried out, export operations in relation to prescribed goods; and
- (b) persons who perform or have performed functions, or who exercise or have exercised powers, under this Act.

A person who is required to retain a record in accordance with the rules may commit an offence of strict liability if the person does not retain the record.

## Division 2—Records

### 408 Requirements to retain records

- (1) The rules may make provision for and in relation to requiring records to be retained by any of the following:
- (a) a person who carries out, or has carried out, export operations in relation to prescribed goods;
  - (b) the manager of an accredited property;
  - (c) a person who manages or controls, or has managed or controlled, export operations at a registered establishment;
  - (d) a person who manages or controls, or has managed or controlled, export operations in accordance with an approved arrangement;
  - (e) a person who participates, or has participated, in the management or control of the export business of a person who holds an export licence (as provided by section 220);
  - (f) a person who carries out, or has carried out, export operations in relation to non-prescribed goods in relation to which:
    - (i) an application for a government certificate or a tariff rate quota certificate has been made; or
    - (ii) a government certificate or a tariff rate quota certificate has been issued;
  - (g) a person who performs or has performed functions, or who exercises or has exercised powers, under this Act.

Note: A person may be required to make a record under a provision of this Act. The following are examples of such requirements:

- (a) the occupier of a registered establishment may be required to make a record about a matter in accordance with a condition of the registration of the establishment imposed under subsection 113(1);
  - (b) the holder of an approved arrangement is required to make a record of certain variations of the approved arrangement under subsection 159(2).
- (2) Without limiting subsection (1), the rules may make provision for and in relation to any of the following:



- (a) the kind of records that must be retained;
- (b) the form in which records must be retained;
- (c) the period for which records must be retained;
- (d) the secure retention of records.

*Strict liability offence*

- (3) A person commits an offence of strict liability if:
  - (a) the person is required to retain a record in accordance with rules made for the purposes of subsection (1) or (2); and
  - (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

## **Part 6—Miscellaneous**

### **Division 1—Introduction**

#### **409 Simplified outline of this Part**

This Part sets out miscellaneous provisions, including in relation to the following:

- (a) taking, testing and analysing samples and the role of analysts;
- (b) forfeiture of goods;
- (c) compensation for damaged and destroyed goods;
- (d) treatment of partnerships, unincorporated associations and trusts;
- (e) reports about export of livestock;
- (f) compensation for acquisition of property;
- (g) circumstances in which the privilege against self-incrimination does not apply;
- (h) penalties for hindering compliance with this Act or influencing a person performing functions or duties or exercising powers under this Act;
- (i) arrangements with States and Territories to assist in carrying out this Act;
- (j) protection from civil proceedings for certain persons who perform functions or duties, or exercise powers, under this Act.

This Part also gives the Secretary the power to make rules for the purposes of this Act. The rules are a disallowable legislative instrument.

## **Division 2—Taking, testing and analysing samples**

### **410 Methods for taking, testing and analysing certain samples**

- (1) This section applies in relation to a sample of goods or any other thing that is to be taken, tested or analysed under this Act (other than in the performance of functions or duties or the exercise of powers under Chapter 10 (compliance and enforcement) or the Regulatory Powers Act).
- (2) The sample must be taken, tested or analysed in accordance with:
  - (a) if a method is prescribed by the rules for that kind of sample—the prescribed method; or
  - (b) in any other case:
    - (i) an applicable method specified in the Australia New Zealand Food Standards Code; or
    - (ii) an applicable method specified in an Australian Standard published by, or on behalf of, Standards Australia; or
    - (iii) any other appropriate, validated and science-based method approved by the Secretary.

### **411 Storage of samples**

The rules may make provision for and in relation to the storage of samples that may be tested or analysed under this Act.

### **412 Test or analysis may result in destruction or reduction in value of sample**

A person who is required or permitted to test or analyse a sample of goods or any other thing under this Act, may carry out tests or analysis that result in the destruction, or a reduction in the value, of the sample or a package or goods associated with the sample.

Section 413

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**413 Appointment of analyst**

- (1) The Secretary may appoint a person to be an analyst for the purposes of this Act.
- (2) The Secretary must not appoint a person to be an analyst for the purposes of this Act unless the Secretary is satisfied that:
  - (a) the person satisfies the training and qualification requirements determined under subsection (3); or
  - (b) the person will satisfy those training and qualification requirements before the person exercises any powers as an analyst for the purposes of this Act.
- (3) The Secretary must determine, in writing, training and qualification requirements for analysts.
- (4) A determination under subsection (3) is not a legislative instrument.

**414 Analyst may give certificate**

- (1) If a person is alleged to have contravened this Act in relation to goods or any other thing, an analyst appointed under section 413 may give a written certificate stating one or more of the following matters:
  - (a) when and from whom the goods or other thing was received;
  - (b) what (if any) labels or other means of identifying the goods or other thing accompanied the goods or other thing when it was received;
  - (c) what covering the goods or other thing was in when it was received;
  - (d) a description, and the weight, of the goods or other thing received;
  - (e) when the goods or other thing, or a portion or sample of the goods or other thing, was tested or analysed;
  - (f) a description of the method of testing or analysis;
  - (g) the results of the testing or analysis;

- (h) how the goods or other thing was dealt with after handling by the analyst, including details of:
  - (i) the quantity retained; and
  - (ii) the name of any person to whom any retained quantity was given; and
  - (iii) measures taken to secure any retained quantity.

Note: In certain circumstances, the certificate may be admitted as evidence in proceedings in relation to the contravention (see section 415).

- (2) A certificate under subsection (1) must be in a form approved by the Secretary.

#### **415 Admission of analyst's certificate in proceedings**

- (1) A certificate given under section 414 is (if the procedure in subsection (2) of this section is complied with) admissible, in any proceedings in relation to a contravention of this Act, as prima facie evidence of:
  - (a) the matters in the certificate; and
  - (b) the correctness of the result of the analysis to which the certificate relates.

##### *Procedure to be followed before admitting certificate*

- (2) At least 14 days before the certificate is admitted as evidence in the proceedings, the following must be given to the person (the **defendant**) who is alleged to have contravened this Act, or a legal practitioner who is appearing for the defendant in the proceedings:
  - (a) a copy of the certificate;
  - (b) notice of the intention to produce the certificate as evidence in the proceedings.

##### *Analyst may be required to attend for cross-examination*

- (3) The defendant may (subject to subsection (4)) require the analyst who gave the certificate to be:
  - (a) called as a witness for the person who instituted the proceedings; and

Section 415

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- (b) cross-examined (as if the analyst had given evidence of the matters stated in the certificate).

*Requirements for cross-examining analyst*

- (4) The analyst may be required to be called as a witness for the person who instituted the proceedings only if:
  - (a) the person who instituted the proceedings has been given at least 4 days' notice of the defendant's intention to require the analyst to be called; or
  - (b) the court, by order, allows the defendant to require the analyst to be called.

*Proof of certificate*

- (5) For the purposes of this Act, a document purporting to be a certificate given under section 414 is taken to be a certificate that has been given in accordance with that section, unless the contrary is established.

## **Division 3—Forfeiture of goods**

### **416 Forfeiture of goods**

- (1) If a person is convicted of an offence against this Act, or is found to have contravened a civil penalty provision of this Act, in relation to particular goods, the court may order the forfeiture to the Commonwealth of the goods.
- (2) The forfeiture of goods under subsection (1) extends to the forfeiture of any coverings in which the goods are contained.
- (3) If goods are forfeited to the Commonwealth under subsection (1), the Secretary may cause the goods to be sold, destroyed or otherwise disposed of.
- (4) Any costs reasonably incurred by the Commonwealth in storing or disposing of goods forfeited under an order made under subsection (1) may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth from the person against whom the order is made.

## **Division 4—Damaged and destroyed goods etc.**

### **417 Person complying with direction or request must not damage or destroy goods**

- (1) This section applies to a person if:
- (a) the Secretary or an authorised officer directs or requests the person to do a thing in relation to goods for the purposes of this Act; and
  - (b) the person is not:
    - (i) the owner of the goods; or
    - (ii) a person (other than an authorised officer) who is in possession or control of the goods.

#### *Civil penalty provision*

- (2) The person is liable to a civil penalty if:
- (a) in complying with the direction or request, the person engages in conduct that causes the goods to be damaged or destroyed; and
  - (b) either:
    - (i) the person did not act in good faith in engaging in that conduct; or
    - (ii) the damage or destruction was not a reasonable or necessary result of complying with the direction or request.

Civil penalty: 120 penalty units.

### **418 Goods seized in certain circumstances may be destroyed**

- If:
- (a) an authorised officer, or a person assisting an authorised officer, seizes perishable goods under Chapter 10 (compliance and enforcement) or the Regulatory Powers Act; and



(b) the goods are not able to be stored in a way that preserves them;  
the Secretary may cause the goods to be destroyed or otherwise disposed of.

#### **419 Compensation for damaged or destroyed goods**

- (1) The Secretary may, if the Secretary considers it appropriate to do so, approve the payment of a reasonable amount of compensation under this section in respect of:
- (a) goods that are damaged by a person in the course of performing functions or duties, or exercising powers, under this Act; or
  - (b) goods that are destroyed under this Act.

Note 1: Compensation is not payable unless a claim is made by or on behalf of the owner of the goods (see subsection 420(3)).

Note 2: The amount of compensation is the amount prescribed by, or determined in accordance with, the rules (see subsection 420(5)).

Note 3: If the Secretary does not approve the payment of a reasonable amount of compensation under this section, the owner of the goods may be entitled to compensation under section 425 (compensation for acquisition of property).

#### *Exceptions*

- (2) The Secretary must not approve the payment of compensation under subsection (1) in respect of goods that are damaged:
- (a) as a result of samples of the goods being taken:
    - (i) during an audit conducted in relation to the goods under Part 1 of Chapter 9; or
    - (ii) during an assessment of the goods carried out under Part 2 of Chapter 9; or
    - (iii) as permitted by subsection 327(2) or 330(2); or
  - (b) in any other circumstances prescribed by the rules.

Section 420

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**420 Claims for, and amount of, compensation**

*Application*

- (1) This section applies in relation to goods (**compensable goods**) in respect of which the Secretary may approve a payment of compensation under subsection 419(1).

*Compensation must be paid to owner*

- (2) Compensation approved under subsection 419(1) in respect of compensable goods must:
- (a) if there is only one owner of the compensable goods—be paid to the owner; or
  - (b) if there are 2 or more owners of the compensable goods—be divided among those owners as prescribed by the rules.

Note: **Owner** is defined in subsection (6).

*Requirements relating to claim for compensation*

- (3) An owner of compensable goods is not entitled to compensation under subsection 419(1) in respect of the goods unless a claim for compensation is made by or on behalf of the owner within 12 months after the goods were damaged or destroyed (as the case may be).
- (4) A claim for compensation under subsection (3) must:
- (a) if the Secretary has approved a form for such claims—be in that form; and
  - (b) be accompanied by the documents (if any) prescribed by the rules.

*Amount of compensation*

- (5) The amount of compensation payable under subsection 419(1) is a reasonable amount prescribed by, or determined in accordance with, the rules.

*Definition of owner*

(6) In this section:

**owner**, in relation to compensable goods, means a person who had an interest in the goods at the time they were damaged or destroyed, but does not include:

- (a) a person who had such an interest by reason only that the person was entitled to the benefit of a mortgage or other charge, or a lien, in respect of the goods (other than a PPSA security interest); or
- (b) a person who held a PPSA security interest in the goods; unless the person was in possession or control of the goods at that time.

## **Division 5—Partnerships, unincorporated associations and trusts**

### **421 Treatment of partnerships**

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) An offence against this Act that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).
- (4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.
- (5) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

### **422 Treatment of unincorporated associations**

- (1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's

committee of management instead, but may be discharged by any of the members.

- (3) An offence against this Act that would otherwise have been committed by the unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence was committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).
- (4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

#### **423 Treatment of trusts**

- (1) This Act applies to a trust as if it were a person, but with the changes set out in this section.

##### *Trusts with a single trustee*

- (2) If the trust has a single trustee:
  - (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on the trustee instead; and
  - (b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by the trustee.

##### *Trusts with multiple trustees*

- (3) If the trust has 2 or more trustees:
  - (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and

Section 423

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- (b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust, at the time the offence was committed, who:
  - (i) did the relevant act or made the relevant omission; or
  - (ii) aided, abetted, counselled or procured the relevant act or omission; or
  - (iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

*Contraventions of civil penalty provisions*

- (4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

## **Division 6—Matters relating to export of livestock**

### **424 Report to Parliament about export of livestock**

- (1) Within 1 month after the end of each reporting period (within the meaning of subsection (4)), the Secretary must give the Minister a report containing the information referred to in subsection (2) that has been provided to the Secretary during the reporting period in relation to the carriage of livestock on a vessel to a port outside Australian territory (whether or not the carriage occurred during the reporting period).
- (2) The information must be based on reporting by the master of the vessel under Marine Orders made under subsection 342(1) of the *Navigation Act 2012* and must include the following:
  - (a) the name of the exporter;
  - (b) the month and year in which the completion of the loading of the livestock occurred;
  - (c) the port or ports at which the loading took place;
  - (d) the port or ports at which the livestock were discharged;
  - (e) the month and year in which the completion of the discharge of the livestock occurred at each port;
  - (f) the duration of the voyage;
  - (g) the type or types of livestock;
  - (h) the number of each type of livestock loaded;
  - (i) the total mortality for each type of livestock;
  - (j) the percentage mortality for each type of livestock;
  - (k) any action taken by the Secretary in relation to the exporter as a result of the reporting by the master of the vessel.
- (3) The Minister must arrange for a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the House after the report is given to the Minister.
- (4) For the purposes of this section, each of the following periods is a reporting period:

Section 424

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- (a) the period of 6 months starting on the first 1 July or 1 January that occurs after the commencement of this section;
- (b) each subsequent period of 6 months.



## **Division 7—Miscellaneous**

### **425 Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
  - (a) the Federal Court; or
  - (b) the Supreme Court of a State or Territory;for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### **426 Privilege against self-incrimination**

*Person not entitled to refuse to answer questions, provide information or produce documents under certain provisions of this Act*

- (1) A person is not excused from answering a question, providing information, or producing a document under section 66, 74, 107, 145, 185, 218, 235, 240, 244, 285, 298B or 378 on the ground that the answer, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

*Use/derivative use indemnity applies to answer, information or document*

- (2) However, in the case of an individual:
  - (a) the answer given, the information provided or the document produced; and

Section 427

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- (b) answering the question, providing the information or producing the document; and
- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question, the provision of the information or the production of the document;

are not admissible in evidence against the individual in any criminal or civil proceedings, except proceedings under, or arising out of, section 136.1, 137.1 or 137.2 of the *Criminal Code* or section 367, 368 or 369 of this Act (false or misleading statements in applications and false or misleading information or documents) in relation to answering the question, providing the information or producing the document.

*Privilege not otherwise affected*

- (3) Except as provided by subsection (1), nothing in this Act affects the right of an individual to refuse to answer a question, provide information or produce a document on the ground that the answer, the information or the production of the document might tend to incriminate the individual or make the individual liable to a penalty.

**427 Hindering compliance with the Act etc.**

- (1) A person must not engage in conduct that hinders or prevents another person from:
  - (a) performing functions or duties, or exercising powers, under this Act; or
  - (b) complying with this Act or a direction given under this Act.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

**427A Influencing a person performing functions or duties or exercising powers**

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
  - (b) the person does so with the intention of dishonestly influencing another person in the performance of the other person's functions or duties, or the exercise of the other person's powers, under this Act.

Note 1: For *dishonest*, see section 12.

Note 2: The physical elements of an offence against subsection (2) are set out in this subsection (see section 370).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 480 penalty units, or both.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 960 penalty units.

Section 428

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**428 Power or requirement to do or cause a thing to be done**

- (1) For the purposes of this Act, if a person (the *first person*) has the power, or is required, under this Act to do a thing, the first person is taken to have done the thing if the first person causes another person to do the thing on behalf of the first person.
- (2) For the purposes of this Act, if a person has the power, or is required, under this Act to cause or direct a thing to be done, the person is taken to have caused or directed the thing to be done if the person does the thing himself or herself.

**429 Arrangements with States and Territories to assist in carrying out this Act**

The Minister may enter into an arrangement with a relevant Minister of a State or Territory in relation to either or both of the following:

- (a) the use of any place in the State or Territory for the purposes of this Act, and the control and management of the place;
- (b) any matters necessary or convenient to be arranged in order to enable the Commonwealth, the State or the Territory to assist each other for the purposes of achieving the objects of this Act.

Note: The Secretary may also enter into arrangements with State or Territory bodies for officers or employees of those bodies to be authorised officers under this Act (see section 294).

**430 Protection from civil proceedings**

*Protection for the Commonwealth and protected persons*

- (1) No civil proceeding lies against the Commonwealth or a protected person in relation to anything done, or omitted to be done, in good faith:
  - (a) by a protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by this Act; or

- (b) by a person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by this Act.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in section 12).

*Protection for persons assisting protected persons*

- (2) No civil proceeding lies against a person in relation to anything done, or omitted to be done, in good faith by the person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by this Act.

*Relationship to certain other provisions*

- (3) This section is subject to section 425 (acquisition of property).

*Meaning of protected person*

- (4) **Protected person** means a person who is, or was, any of the following:
- (a) the Minister;
  - (b) the Secretary;
  - (c) an authorised officer;
  - (d) an officer or employee of the Department.

**431 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid**

A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a specified provision of this Act in the circumstances prescribed by the rules.

Section 432

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**432 Rules**

- (1) The Secretary may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Note: The rules may make different provision with respect to different matters or different classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any of the following as in force or existing from time to time:
- (a) any matter contained in:
    - (i) the document (the **original document**) published by the Department titled *Australian Standards for the Export of Livestock*; or
    - (ii) any document (the **later document**) that is published by the Department after the original document and that sets out standards for the export of Australian livestock (whether or not the title of the later document is the same as the title of the original document);
  - (b) any matter contained in:

## Section 432

- (i) the document titled *Australian Fish Names Standard AS 5300-2015*; or
- (ii) any later Australian Standard that sets out Australian fish names;
- (c) any matter contained in any instrument or writing that:
  - (i) sets out requirements for export operations in Australian territory, or in a part of Australian territory, in relation to a kind of prescribed goods that are to be imported into a country; and
  - (ii) is made by the authority or body that is responsible for regulating the importation of prescribed goods of that kind into that country;
- (d) any matter contained in the Australia New Zealand Food Standards Code;
- (e) any matter contained in the Codex Alimentarius issued by the body known as the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organization;
- (f) any matter contained in any instrument or writing made:
  - (i) by the Office International des Epizooties (also known as the World Organisation for Animal Health); or
  - (ii) under the International Plant Protection Convention;
- (g) any matter contained in any instrument or writing that:
  - (i) sets out, or provides a method for calculating, the tariff rate quota for the importation of a kind of goods into a country; and
  - (ii) is made by the authority or body that is responsible for regulating the importation of goods of that kind into that country.

Note 1: The document referred to in subparagraph (a)(i) could in 2020 be viewed on the Department's website (<http://www.agriculture.gov.au>).

Note 2: The document referred to in subparagraph (b)(i) could in 2020 be viewed at <http://www.fishnames.com.au>.

Note 3: The document referred to in paragraph (e) could in 2020 be viewed on the website of the Food and Agriculture Organization of the United Nations (<http://www.fao.org>).

**Chapter 11** Miscellaneous

**Part 6** Miscellaneous

**Division 7** Miscellaneous

**Section 432**

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- Note 4: The Office International des Epizooties referred to in subparagraph (f)(i) was created by the International Agreement for the Creation at Paris of an International Office for Dealing with Contagious Diseases of Animals, done at Paris on 25 January 1924. The Agreement is in Australian Treaty Series 1925 No. 15 ([1925] ATS 15) and could in 2020 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- Note 5: Rules made for the purposes of section 29 may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is published on the Department's website (<http://www.agriculture.gov.au>) (see subsection 29(4)).
- Note 6: The rules may also apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing as in force or existing at the time when the rules commence (see paragraph 14(1)(b) of the *Legislation Act 2003*).
- (4) In this section, a reference to this Act does not include a reference to instruments made under this Act or the Regulatory Powers Act.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Export Control Act 2020	12, 2020	6 Mar 2020	s 3–432: <u>awaiting commencement (s 2(1) item 2)</u> Remainder: 6 Mar 2020 (s 2(1) item 1)	
Export Control Legislation Amendment (Certification of Narcotic Exports) Act 2020	73, 2020	22 June 2020	Sch 1 (items 2, 3): 23 June 2020 (s 2(1) item 1)	—

**Endnote 4—Amendment history**

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<b>Provision affected</b>	<b>How affected</b>
Part 2	
Division 1	
s 12 .....	am No 73, 2020

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