





# **Export Control (Consequential Amendments and Transitional Provisions) Act 2020**

**No. 13, 2020**

**An Act to deal with consequential amendments and  
transitional matters arising from the enactment of  
the *Export Control Act 2020*, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to deal with consequential amendments and  
transitional matters arising from the enactment of  
the *Export Control Act 2020*, and for other purposes**

*[Assented to 6 March 2020]*

The Parliament of Australia enacts:

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## 1 Short title

This Act is the *Export Control (Consequential Amendments and Transitional Provisions) 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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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 March 2020
2. Schedules 1 to 3	At the same time as section 3 of the <i>Export Control Act 2020</i> commences.  However, the provisions do not commence at all if that Act does not commence.	

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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Repeals of Acts**

### **1 Repeals of Acts**

Repeal the following Acts:

*Australian Meat and Live-stock Corporation Amendment Act  
1990*

*Australian Meat and Live-stock Legislation (Consequential  
Amendments and Transitional Provisions) Act  
1985*

*Australian Meat and Live-stock (Quotas) Amendment Act  
1995*

*Export Charges (Collection) Act 2015*

*Export Control Act 1982*

*Export Control Amendment Act 1991*

*Export Control Amendment Act 2003*

*Export Control Amendment (Quotas) Act 2015*

*Export Inspection Charges Collection Act 1985*

*Export Inspection Charges Laws Amendment Act 1993*

*Export Inspection (Establishment Registration Charges) Act  
1985*

***Export Inspection (Establishment Registration Charges)  
Amendment Act 2014***

***Export Inspection (Quantity Charge) Act 1985***

***Export Inspection (Quantity Charge) Amendment Act 2014***

***Export Inspection (Service Charge) Act 1985***

***Export Inspection (Service Charge) Amendment Act 2014***

***Export Legislation Amendment Act 2014***

## **Schedule 2—Consequential amendments**

### ***Australian Meat and Live-stock Industry Act 1997***

#### **1 Section 3 (definition of associate)**

Repeal the definition.

#### **2 Section 3**

Insert:

*Secretary* means the Secretary of the Department.

#### **3 Section 6**

Repeal the section.

#### **4 Parts 2 and 2A**

Repeal the Parts.

#### **5 Subsection 70(2)**

Omit “(other than section 49)”.

#### **6 Section 73**

Repeal the section.

### ***Commerce (Trade Descriptions) Act 1905***

#### **7 Section 10A**

Omit “*Export Control Act 1982*”, substitute “*Export Control Act 2020*”.

### ***Criminal Code Act 1995***

#### **8 Section 473.1 of the *Criminal Code* (paragraph (j) of the definition of *primary production business*)**

Omit “*Export Control Act 1982*”, substitute “*Export Control Act 2020*”.

## ***Customs Act 1901***

### **9 Section 122R (example)**

Omit “*Export Control Act 1982*”, substitute “*Export Control Act 2020*”.

## ***Environment Protection and Biodiversity Conservation Act 1999***

### **10 Paragraph 524(3)(b)**

Omit “*Export Control Act 1982*”, substitute “*Export Control Act 2020*”.

### **11 Transitional—decision to grant governmental authorisation under the *Export Control Act 1982* to take an action is not an action for the *Environment Protection and Biodiversity Conservation Act 1999***

A decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation (however described) under the *Export Control Act 1982* for another person to take an action is not an **action** as defined in section 524 of the *Environment Protection and Biodiversity Conservation Act 1999*.

## ***Horticulture Marketing and Research and Development Services Act 2000***

### **12 Section 3**

Omit:

The *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* abolishes the Australian Horticultural Corporation, the Horticultural Research and Development Corporation and the Australian Dried Fruits Board. It also deals with matters arising from the transition to the new bodies, such as transfer of staff and assets from the Corporations and a 2 year period to phase in the new export control system provided for in Part 4 of this Act.

substitute:

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The *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* abolishes the Australian Horticultural Corporation, the Horticultural Research and Development Corporation and the Australian Dried Fruits Board. It also deals with matters arising from the transition to the new bodies, such as transfer of staff and assets from the Corporations.

The *Export Control Act 2020* regulates the export of certain horticultural products.

**13 Section 4**

Repeal the following definitions:

- (a) definition of *export*;
- (b) definition of *market*;
- (c) definition of *regulated horticultural market*;
- (d) definition of *regulated horticultural product*.

**14 Section 4 (paragraph (c) of the definition of *statutory record*)**

Repeal the paragraph, substitute:

- (c) any record that is the property of the industry export control body.

**15 Part 4**

Repeal the Part.

**16 Subsection 35(1) (note)**

Repeal the note.

***Inspector-General of Live Animal Exports Act 2019*****17 Section 5 (paragraph (a) of the definition of *live-stock export official*)**

Repeal the paragraph.

**18 Section 5 (paragraphs (b) and (c) of the definition of live-stock export official)**

Omit “*Export Control Act 1982*”, substitute “*Export Control Act 2020*”.

**19 Subsection 10(1)**

Repeal the subsection, substitute:

- (1) The Inspector-General may review the performance of functions, or exercise of powers, by live-stock export officials under the *Export Control Act 2020*, or an instrument made under that Act, in relation to the export of live-stock.

**20 Saving—reviews in progress before commencement of Export Control Act 2020**

- (1) If the Inspector-General of Live Animal Exports had started to conduct a review under subsection 10(1) of the *Inspector-General of Live Animal Exports Act 2019* before the commencement of this item, but the review had not been completed before that commencement, the Inspector-General of Live Animal Exports may complete the review and publish a report on the review as if the amendment of subsection 10(1) of the *Inspector-General of Live Animal Exports Act 2019* by this Act had not happened.
- (2) If the Inspector-General of Live Animal Exports had completed a review under subsection 10(1) of the *Inspector-General of Live Animal Exports Act 2019* before the commencement of this item, but had not published a report on the review before that commencement, the Inspector-General of Live Animal Exports must publish a report on the review as required by subsection 10(3) of the *Inspector-General of Live Animal Exports Act 2019*.

***Regional Forest Agreements Act 2002***

**21 Section 4 (paragraph (a) of the definition of RFA wood)**

Omit “regulation 4B of the Export Control (Unprocessed Wood) Regulations”, substitute “rules made under section 432 of the *Export Control Act 2020*”.

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**22 Section 4 (paragraph (b) of the definition of *RFA wood*)**

Omit “regulation 4C of those regulations”, substitute “those rules”.

**23 Subsections 6(1) and (2)**

Omit “*Export Control Act 1982*” (wherever occurring), substitute “*Export Control Act 2020*”.

***Wine Australia Act 2013***

**24 Section 45**

Omit “*Export Control Act 1982*, or of any regulations”, substitute “*Export Control Act 2020*, or of any regulations or other legislative instruments”.

## Schedule 3—Application, saving and transitional provisions

### Part 1—Preliminary

#### 1 Definitions

(1) In this Schedule:

**commencement time** means the time when section 3 of the new Export Control Act commences.

**new Export Control Act** means the *Export Control Act 2020*.

**old AMLI Order** means an order under section 17 of the *Australian Meat and Live-stock Industry Act 1997*, as the order was in force immediately before the commencement time.

**old AMLI Regulations** means regulations made for the purposes of old Part 2 of the AMLI Act, as those regulations were in force immediately before the commencement time.

**old Export Control Act** means the *Export Control Act 1982*, as in force immediately before the commencement time.

**old Export Control Law** means any of the following laws:

- (a) the old Export Control Act;
- (b) old Export Control Regulations;
- (c) an old Export Control Order;
- (d) old Part 2 of the AMLI Act;
- (e) old AMLI Regulations;
- (f) an old AMLI Order.

**old Export Control Order** means an order made by the Minister under regulation 3 of the *Export Control (Orders) Regulations 1982*, as the order was in force immediately before the commencement time.

**old Export Control Regulations** means regulations made under the old Export Control Act, as those regulations were in force immediately before the commencement time.

**old Part 2 of the AMLI Act** means Part 2 of the *Australian Meat and Live-stock Industry Act 1997*, as in force immediately before the commencement time.

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

**wood export licence** means a licence to export prescribed goods that are hardwood wood chips or other kinds of unprocessed wood.

Note: Before the commencement time, wood export licences could be granted under the *Export Control (Hardwood Wood Chips) Regulations 1996* and the *Export Control (Unprocessed Wood) Regulations (Statutory Rules 1986 No. 79, as amended)*.

- (2) An expression used in a provision of this Schedule and in the new Export Control Act has the same meaning in that provision as it has in the new Export Control Act, subject to subitems (3) and (4).
- (3) An expression used in a provision of this Schedule and in the old Export Control Act, old Export Control Regulations or an old Export Control Order has the same meaning in that provision as it had in the old Export Control Act, old Export Control Regulations or old Export Control Order to the extent that:
  - (a) the use of the expression in that provision relates to an event that occurred, or a state of affairs that existed, under the old Export Control Act, old Export Control Regulations or old Export Control Order before the commencement time; or
  - (b) the provision has the effect that a provision of the old Export Control Act, old Export Control Regulations or old Export Control Order continues to apply despite the repeal of the old Export Control Act, old Export Control Regulations or old Export Control Order.
- (4) An expression used in a provision of this Schedule and in old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order has the same meaning in that provision as it had in old Part 2 of the AMLI Act, the old AMLI Regulations or the old AMLI Order to the extent that:
  - (a) the use of the expression in that provision relates to an event that occurred, or a state of affairs that existed, under old Part 2 of the AMLI Act, the old AMLI Regulations or the old AMLI Order before the commencement time; or
  - (b) the provision has the effect that a provision of old Part 2 of the AMLI Act, the old AMLI Regulations or the old AMLI Order continues to apply despite the repeal of old Part 2 of the AMLI Act, the old AMLI Regulations or the old AMLI Order.

## 2 Section 7 of the *Acts Interpretation Act 1901*

This Schedule does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeals and amendments made by this Act.

## 3 References to an old Export Control Law in continuing instruments etc.

- (1) This item applies in relation to an instrument, a certificate or another document that was made or given under an old Export Control Law if, under this Act, the instrument, certificate or other document continues in force, or to have effect, under or for the purposes of the new Export Control Act or rules made under that Act.

Note: Examples include an instrument of exemption, a government certificate, a notice of accreditation of a property, a certificate of registration of an establishment, an approved arrangement, an export licence, an export permit, a notice of intention to export goods, an instrument of authorisation, and an instrument of approval.

- (2) If:

- (a) the instrument, certificate or other document includes a reference to an old Export Control Law or a provision of an old Export Control Law (the *old provisions*); and
- (b) the new Export Control Act, or rules made under that Act, make provision (the *corresponding new provisions*) in relation to the matter covered by the old provisions; and
- (c) the corresponding new provisions have a substantially similar effect in relation to the matter as the old provisions;

then the reference to the old provisions is taken, after the commencement time, to be a reference to the corresponding new provisions.

## Part 2—Exporting goods

### Division 1—Exemptions

#### 4 Exemptions from old Export Control Order or old AMLI Order in force immediately before commencement time

- (1) This item applies in relation to the export of a kind of prescribed goods (the *relevant goods*) to which an old Export Control Order or an old AMLI Order applied if:
  - (a) an instrument of exemption in relation to the relevant goods was in force under the old Export Control Order or the old AMLI Order immediately before the commencement time; and
  - (b) the new Export Control Act or rules made under that Act include one or more provisions (the *corresponding new provisions*) that are substantially similar to the provisions of the old Export Control Order or the old AMLI Order that did not apply in relation to the relevant goods under the instrument of exemption.
- (2) The instrument of exemption continues in force after the commencement time as if:
  - (a) the exemption to which the instrument of exemption relates were an exemption granted under paragraph 54(1)(a) of the new Export Control Act in relation to:
    - (i) the relevant goods; and
    - (ii) the corresponding new provisions; and
    - (iii) if applicable, each importing country covered by the instrument of exemption; and
  - (b) the instrument of exemption were an instrument of exemption for the purposes of subsection 56(1) of the new Export Control Act.
- (3) If the exemption was subject to conditions, the exemption continues to be subject to those conditions after the commencement time.
- (4) If the instrument of exemption did not provide for the exemption to cease to be in force on a day or at the end of a period, the exemption

remains in force unless it is revoked under section 59 of the new Export Control Act.

- (5) If the instrument of exemption provided for the exemption to cease to be in force on a specified day or at the end of a specified period, the exemption remains in force until the specified day, or the end of the specified period, unless it is revoked under section 59 of the new Export Control Act.
- (6) Section 57 of the new Export Control Act does not apply in relation to the exemption.
- (7) The Secretary may vary the instrument of exemption to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

#### **5 Application for exemption from old Export Control Order or old AMLI Order made but not decided, or decision not notified, before commencement time**

- (1) This item applies if:
  - (a) an application had been made under an old Export Control Order or an old AMLI Order for an exemption from one or more provisions of an old Export Control Order or an old AMLI Order in relation to a kind of prescribed goods (the *relevant goods*); and
  - (b) the new Export Control Act or rules made under that Act include one or more provisions (the *corresponding new provisions*) that are substantially similar to the provisions of the old Export Control Order or old AMLI Order from which the exemption was sought; and
  - (c) either:
    - (i) no decision on the application had been made before the commencement time; or
    - (ii) a decision on the application had been made before the commencement time but notice of the decision had not been given to the applicant before that time.

*Decision not made before commencement time*

- (2) If no decision on the application had been made before the commencement time:
- (a) the application is taken after the commencement time to be an application made under section 53 of the new Export Control Act for an exemption from the corresponding new provisions in relation to the relevant goods; and
  - (b) subsections 53(3) to (5) of the new Export Control Act do not apply in relation to the application.

*Decision made before commencement time but notice not given before that time*

- (3) If the Secretary had made a decision on the application before the commencement time but had not notified the applicant of the decision before that time, the Secretary must, as soon as practicable after that time, give the applicant written notice of the decision.
- (4) If the Secretary had decided to grant the exemption:
- (a) the decision is taken to be a decision under paragraph 54(1)(a) of the new Export Control Act to grant an exemption from the corresponding new provisions in relation to the relevant goods; and
  - (b) the Secretary must give the applicant an instrument of exemption stating the information referred to in subsection 56(1) of the new Export Control Act.
- (5) If the Secretary had decided not to grant the exemption, the notice of the decision must include:
- (a) the reasons for the decision; and
  - (b) information about the applicant's right to have the decision reviewed.

Note: See item 78 in relation to review of decisions.

## Division 2—Government certificates

### 6 Government certificates in force immediately before commencement time

- (1) This item applies in relation to a certificate (a *government certificate*) that had been issued under an old Export Control Order in relation to goods (the *relevant goods*) to be exported from Australia if the certificate was in force immediately before the commencement time.
- (2) The government certificate continues in force after the commencement time:
  - (a) as if it had been issued under paragraph 67(1)(a) of the new Export Control Act in relation to the relevant goods; and
  - (b) subject to any conditions stated on the certificate.
- (3) The person that issued the government certificate is taken to be the issuing body for the certificate for the purposes of Part 3 of Chapter 2 of the new Export Control Act.
- (4) Subsection 72(1) of the new Export Control Act does not apply in relation to the government certificate.
- (5) The Secretary may vary the government certificate to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

### 7 Government certificates issued before commencement time to take effect after that time

- (1) This item applies in relation to a certificate (a *government certificate*) that had been issued under an old Export Control Order in relation to goods (the *relevant goods*) to be exported from Australia if the certificate states that it takes effect on a specified date that is the date the commencement time occurs or a later date.
- (2) The government certificate has effect after the commencement time as if it had been issued under paragraph 67(1)(a) of the new Export Control Act in relation to the relevant goods.

Note: The government certificate takes effect on the date stated in the certificate (see paragraph 72(1)(b) of the new Export Control Act).

- (3) The person that issued the government certificate is taken to be the issuing body for the certificate for the purposes of Part 3 of Chapter 2 of the new Export Control Act.
- (4) The Secretary may vary the government certificate to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

### **8 Application for government certificate not decided before commencement time**

- (1) This item applies in relation to an application that had been made under an old Export Control Order for the issue of a certificate (a **government certificate**) in relation to goods (the **relevant goods**) to be exported from Australia if no decision on the application had been made before the commencement time.
- (2) The application is taken after the commencement time to be an application made under subsection 65(1) of the new Export Control Act for a government certificate in relation to the relevant goods.
- (3) Subsections 65(2) to (4) of the new Export Control Act do not apply in relation to the application.
- (4) The person to whom the application was made is taken to be an issuing body for a government certificate in relation to the relevant goods for the purposes of Part 3 of Chapter 2 of the new Export Control Act.

## Part 3—Accredited properties

### 9 Accreditations in force immediately before commencement time

- (1) This item applies to a property that was accredited under an old Export Control Order if the accreditation of the property was in force immediately before the commencement time.
- (2) For the purposes of subitem (1), the accreditation of a property is taken to have been in force under an old Export Control Order immediately before the commencement time even if the accreditation of the property was suspended at that time.

#### *Accreditation continues in force*

- (3) The accreditation of the property continues in force after the commencement time:
  - (a) as if the property had been accredited under Chapter 3 of the new Export Control Act; and
  - (b) subject to any conditions stated in the notice of the decision to accredit the property, or a later decision to renew the accreditation of the property, that was given to the manager of the property by the Secretary before the commencement time.

Note 1: The accreditation is also subject to the conditions provided by the new Export Control Act and the conditions prescribed by rules made for the purposes of paragraph 80(1)(b) of that Act (see subsection 80(1) of that Act).

Note 2: The accreditation of the property may be varied under item 16 of this Schedule or varied, suspended or revoked under Chapter 3 of the new Export Control Act.

#### *Expiry of accreditation*

- (4) If there was no expiry date for the accreditation of the property under the old Export Control Order, the accreditation of the property continues in force unless it is revoked under Part 6 of Chapter 3 of the new Export Control Act or under rules made for the purposes of subsection 109(3) of that Act.

- (5) If there was an expiry date for the accreditation of the property under the old Export Control Order, the accreditation of the property continues in force until that expiry date unless:
- (a) it is renewed under Part 3 of Chapter 3 of the new Export Control Act on or before that date; or
  - (b) it is revoked under Part 6 of Chapter 3 of that Act or under rules made for the purposes of subsection 109(3) of that Act on or before that date.

## **10 Variation of accreditation by Secretary before commencement time**

### *Show cause notice given before commencement time*

- (1) If:
- (a) a notice (a *show cause notice*) had been given to the manager of an accredited property under an old Export Control Order to show cause, within a specified period, why a specified variation in relation to the accreditation of the property should not be made; and
  - (b) the period had not ended before the commencement time;
- then the show cause notice continues to have effect after the commencement time as if it were a notice given to the manager of the property under subsection 90(3) of the new Export Control Act.

Note: The 14 day period for the manager of the property to respond to the show cause notice starts on the day the notice was given to the manager (see paragraph 90(4)(c) of the new Export Control Act).

### *Variation made but manager not notified before commencement time*

- (2) If:
- (a) the Secretary had made a variation in relation to the accreditation of a property under an old Export Control Order; and
  - (b) the Secretary had not given the manager of the property written notice of the variation before the commencement time;

the Secretary must give the manager written notice of the variation. The notice must state the information referred to in subsection 91(2) of the new Export Control Act.

*Variation made before commencement time to take effect after commencement time*

- (3) If:
- (a) the Secretary had made a variation in relation to the accreditation of a property under an old Export Control Order; and
  - (b) the variation had not taken effect before the commencement time;
- the variation takes effect:
- (c) as if it had been made under section 90 of the new Export Control Act; and
  - (d) on the date specified in the notice given to the manager of the property under subsection 91(1) of that Act.

## **11 Suspension of accreditation**

*Show cause notice given before commencement time*

- (1) If:
- (a) a notice (a *show cause notice*) had been given to the manager of an accredited property under an old Export Control Order to show cause, within a specified period, why the accreditation of the property should not be suspended; and
  - (b) the period had not ended before the commencement time;
- then the show cause notice continues to have effect after the commencement time as if it were a notice given to the manager of the property under subsection 94(2) of the new Export Control Act.

Note: The 14 day period for the manager of the property to respond to the show cause notice starts on the day the notice was given to the manager (see paragraph 94(3)(c) of the new Export Control Act).

*Notice of payment due given before commencement time*

- (2) If:
-

- (a) a notice had been given to a person (the *debtor*) under an old Export Control Order because the amount of a relevant Commonwealth liability (within the meaning of the old Export Control Order) of the manager of an accredited property, or relating to the property, had not been paid by the due date for payment; and
- (b) the period for paying the amount, or entering into an arrangement with the Secretary to pay the amount, had not ended before the commencement time;

then the notice continues to have effect after the commencement time as if it were a notice given to the debtor under paragraph 95(1)(b) of the new Export Control Act.

Note: If, within 8 days after the notice was given to the debtor, the amount of the relevant Commonwealth liability is not paid or the debtor does not enter into an arrangement with the Secretary to pay the amount, the Secretary may suspend the accreditation of the property in relation to all kinds of export operations and all kinds of prescribed goods (see subsection 95(1) of the new Export Control Act).

***Accreditation suspended immediately before commencement time***

- (3) If:
  - (a) the accreditation of a property had been suspended under an old Export Control Order; and
  - (b) the suspension was in force immediately before the commencement time;

then the accreditation of the property is taken to be suspended after the commencement time under Part 5 of Chapter 3 of the new Export Control Act.

***Request to revoke suspension***

- (4) If:
  - (a) the accreditation of a property was suspended immediately before the commencement time; and
  - (b) the manager of the property had, under an old Export Control Order, requested the Secretary, in writing, to revoke the suspension; and
  - (c) either:

- (i) no decision in response to the request had been made before the commencement time; or
- (ii) a decision in response to the request had been made before the commencement time but notice of the decision had not been given to the manager of the property before that time;

then the Secretary must comply with subsection 93(3) of the new Export Control Act in relation to the request as if it had been made under subsection 93(1) of that Act.

*Notice of suspension given before commencement time*

- (5) If:
- (a) the Secretary had, under an old Export Control Order, given the manager of an accredited property notice in writing of the suspension of the accreditation of the property; and
  - (b) the suspension had not taken effect before the commencement time;
- then:
- (c) the Secretary is taken to have decided to suspend the accreditation under subsection 94(1) of the new Export Control Act; and
  - (d) the suspension takes effect after the commencement time in accordance with the notice.

Note 1: The decision to suspend the accreditation is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

Note 2: The Secretary may revoke the suspension (see section 98 of the new Export Control Act).

## **12 Revocation of accreditation**

*Notice given before commencement time by Secretary*

- (1) If:
- (a) a notice (a *show cause notice*) had been given to the manager of a property under an old Export Control Order to show cause, within a specified period, why the accreditation of the property should not be cancelled or revoked; and
  - (b) the period had not ended before the commencement time;

then the show cause notice continues to have effect after the commencement time as if it were a notice given to the manager of the property under subsection 102(2) of the new Export Control Act.

Note: The 14 day period for the manager of the property to respond to the show cause notice starts on the day the notice was given to the manager (see paragraph 102(3)(b) of the new Export Control Act).

- (2) If:
- (a) the Secretary had, under an old Export Control Order, given the manager of an accredited property notice in writing of the cancellation or revocation of the accreditation of the property; and
  - (b) the cancellation or revocation had not taken effect before the commencement time;

then:

- (c) the Secretary is taken to have decided to revoke the accreditation under subsection 102(1) of the new Export Control Act; and
- (d) the revocation takes effect after the commencement time in accordance with the notice.

Note: The decision to revoke the accreditation is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

*Notice given before commencement time by manager of accredited property withdrawing property from accreditation*

- (3) If:
- (a) the manager of an accredited property had, under an old Export Control Order, given written notice to the Secretary withdrawing the property from accreditation; and
  - (b) the notice is received by the Secretary after the commencement time;

then the Secretary must, under subsection 101(3) of the new Export Control Act, revoke the accreditation of the property with effect on the later of the following:

- (c) the day the Secretary receives the notice;
- (d) the day specified in the notice.

*Request made before commencement time by manager of accredited property to revoke accreditation*

- (4) If the manager of an accredited property had, under an old Export Control Order, requested the Secretary, in writing, to revoke the accreditation of the property, the Secretary must, under subsection 101(3) of the new Export Control Act, revoke the accreditation with effect:
- (a) on the day specified in the request; or
  - (b) if the Secretary had given the manager a notice requesting the manager to show cause why the accreditation should not be revoked and the Secretary had not decided whether to revoke the accreditation or not—on a later day that the Secretary considers appropriate.

**13 Application for accreditation etc. made but not decided before commencement time**

- (1) This item applies if:
- (a) an application had been made to the Secretary under an old Export Control Order:
    - (i) to accredit a property; or
    - (ii) to renew the accreditation of a property; or
    - (iii) to make or approve a variation in relation to the accreditation of a property or vary the conditions of accreditation of a property; and
  - (b) no decision on the application had been made, or had been taken to have been made, before the commencement time.
- (2) After the commencement time:
- (a) an application referred to in subparagraph (1)(a)(i) is taken to be an application made under section 78 of the new Export Control Act; and
  - (b) an application referred to in subparagraph (1)(a)(ii) is taken to be an application made under section 83 of the new Export Control Act; and
  - (c) an application referred to in subparagraph (1)(a)(iii) is taken to be an application made under subsection 87(1) of the new Export Control Act.

Note: Section 378 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the application.

- (3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the new Export Control Act do not apply in relation to the application.
- (4) If, under the old Export Control Order, a decision to refuse the application would have been taken to have been made at the end of a period (the *old consideration period*) specified in the old Export Control Order, then, in working out the consideration period for the application for the purposes of section 379 of the new Export Control Act:
- (a) the initial consideration period for the application is taken to be the number of days in the old consideration period instead of the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of that Act; and
  - (b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.
- (5) If subitem (4) does not apply in relation to the application, the consideration period for the application for the purposes of section 379 of the new Export Control Act starts on the day the commencement time occurs.

Note: The initial consideration period for an application to which subitem (5) applies is the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of the new Export Control Act.

#### **14 Application for accreditation etc. made and decided but applicant not notified before commencement time**

- (1) This item applies if:
- (a) an application had been made to the Secretary under an old Export Control Order:
    - (i) to accredit a property; or
    - (ii) to renew the accreditation of a property; or
    - (iii) to make or approve a variation in relation to the accreditation of a property or vary the conditions of accreditation of a property; and

- (b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.
- (2) The Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.
- (3) If the decision was to accredit a property, the property is taken to be accredited under Chapter 3 of the new Export Control Act.
- (4) If the decision was to accredit a property, or renew the accreditation of a property, the notice under subitem (2) must state the information referred to in section 81 of the new Export Control Act.
- (5) If the decision was to make or approve a variation or vary conditions, the notice under subitem (2) must state the information referred to in subsection 88(2) of the new Export Control Act.
- (6) If the Secretary had decided, or had been taken to have decided, to refuse the application, the notice under subitem (2) must state:
  - (a) the reasons for the decision; and
  - (b) information about the applicant's right to have the decision reviewed.

Note: See item 78 in relation to review of decisions.

## **15 Notice or direction to take action given before commencement time**

- (1) This item applies if:
  - (a) a person who was, or who had been, the manager of an accredited property before the commencement time had been given:
    - (i) notice of the cancellation or revocation of the accreditation of the property under an old Export Control Order; and
    - (ii) a notice or direction (the *old notice or direction*) under the old Export Control Order requiring the person to take specified action in relation to the operations and prescribed goods covered by the accreditation; and

(b) the old notice or direction had not been complied with before the commencement time.

- (2) The person must comply with the old notice or direction.

*Fault-based offence*

- (3) The person commits an offence if the person fails to comply with the old notice or direction.

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

*Civil penalty provision*

- (4) The person is liable to a civil penalty if the person fails to comply with the old notice or direction.

Penalty: 240 penalty units.

**16 Variation of documents etc. relating to accreditation to replace references to old laws**

- (1) This item applies in relation to an accredited property if the accreditation of the property continues in force after the commencement time under subitem 9(3).
- (2) The Secretary may vary a document or record retained by the Secretary relating to the accreditation of the property to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).
- (3) The Secretary may direct the manager of the property, in writing, to vary any notice or other document or record retained by the manager relating to the accreditation of the property by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).
- (4) If the manager of the property is given a direction under subitem (3), the manager must comply with the direction:

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- (a) within 2 years after receiving it; or
  - (b) within any longer period granted by the Secretary on application, in writing, by the manager.
- (5) Subparagraphs 94(1)(d)(i) and 102(1)(d)(i) of the new Export Control Act apply in relation to the accreditation of the property as if the reference to a direction in those subparagraphs included a reference to a direction given to the manager of the property under subitem (3) of this item.
- Note: The accreditation of the property may be suspended or revoked if the manager of the property fails to comply with the direction (see subparagraphs 94(1)(d)(i) and 102(1)(d)(i) of the new Export Control Act).

## **Part 4—Registered establishments**

### **17 Registrations in force immediately before commencement time**

- (1) This item applies to an establishment that was registered under an old Export Control Order if the registration of the establishment was in force immediately before the commencement time.

Note: For the purposes of the old Export Control Act and an old Export Control Order, establishment includes premises (see the definition of *establishment* in section 3 of the old Export Control Act).

- (2) For the purposes of subitem (1), the registration of an establishment is taken to have been in force under an old Export Control Order immediately before the commencement time even if the registration of the establishment was suspended, in full or in part, at that time.

#### *Registration continues in force*

- (3) The registration of the establishment continues in force after the commencement time:
- (a) as if the establishment had been registered under Chapter 4 of the new Export Control Act; and
  - (b) subject to any conditions stated in:
    - (i) the certificate of registration of the establishment; or
    - (ii) any later notice given to the occupier of the establishment by the Secretary before the commencement time.

Note 1: The registration is also subject to the conditions provided by the new Export Control Act and the conditions prescribed by rules made for the purposes of paragraph 113(1)(b) of that Act (see subsection 113(1) of that Act).

Note 2: The registration of the establishment may be varied under item 23 of this Schedule or varied, suspended or revoked under Chapter 4 of the new Export Control Act.

#### *Expiry of registration*

- (4) If there was no expiry date for the registration of the establishment under the old Export Control Order, the registration of the establishment continues in force unless:

- (a) it is revoked under Part 6 of Chapter 4 of the new Export Control Act; or
  - (b) it is taken to have been revoked under section 147 of that Act.
- (5) If there was an expiry date for the registration of the establishment under the old Export Control Order, the registration of the establishment continues in force until that expiry date unless:
- (a) it is renewed under Part 3 of Chapter 4 of the new Export Control Act on or before that date; or
  - (b) it is revoked under Part 6 of Chapter 4 of that Act, or is taken to have been revoked under section 147 of that Act, on or before that date.

## 18 Suspension of registration

### *Show cause notice given before commencement time*

- (1) If:
- (a) a notice (a *show cause notice*) had been given to the occupier of a registered establishment under an old Export Control Order to show cause, within a specified period, why the registration of the establishment should not be suspended; and
  - (b) the period had not ended before the commencement time;
- then the show cause notice continues to have effect after the commencement time as if it were a notice given to the occupier of the establishment under subsection 127(2) of the new Export Control Act.

Note: The 14 day period for the occupier of the establishment to respond to the show cause notice starts on the day the notice was given to the occupier (see paragraph 127(3)(c) of the new Export Control Act).

### *Notice of payment due given before commencement time*

- (2) If:
- (a) a notice had been given to the occupier of a registered establishment under an old Export Control Order because the amount of a relevant Commonwealth liability (within the meaning of the old Export Control Order) in relation to the establishment had not been paid by the due date for payment; and
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- (b) the period for paying the amount, or entering into an arrangement with the Secretary to pay the amount, had not ended before the commencement time;

then the notice continues to have effect after the commencement time as if it were a notice given to the occupier of the establishment under paragraph 128(1)(b) of the new Export Control Act.

Note: If, within 8 days after the notice was given to the occupier, the amount of the relevant Commonwealth liability is not paid or the occupier does not enter into an arrangement with the Secretary to pay the amount, the Secretary may suspend the registration of the establishment in relation to all kinds of export operations and all kinds of prescribed goods (see subsection 128(1) of the new Export Control Act).

*Registration suspended immediately before commencement time*

- (3) If:
  - (a) the registration of an establishment had been suspended, in full or in part, under an old Export Control Order; and
  - (b) the suspension was in force immediately before the commencement time;

then the registration of the establishment is taken to be suspended, in full or in part (as the case may be), after the commencement time under Part 5 of Chapter 4 of the new Export Control Act.

*Notice of suspension given before commencement time*

- (4) If:
  - (a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment notice in writing of the suspension, in full or in part, of the registration of the establishment; and
  - (b) the suspension had not taken effect before the commencement time;

then:

- (c) the Secretary is taken to have decided to suspend the registration, in full or in part in accordance with the notice, under subsection 127(1) of the new Export Control Act; and
- (d) the suspension takes effect after the commencement time in accordance with the notice.

Note 1: The decision to suspend the registration is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

Note 2: The Secretary may revoke the suspension (see section 131 of the new Export Control Act).

## 19 Revocation of registration

### *Notice given before commencement time by Secretary*

(1) If:

- (a) a notice (a **show cause notice**) had been given to the occupier of a registered establishment under an old Export Control Order to show cause, within a specified period, why the registration of the establishment should not be cancelled or revoked, in full or in part; and
- (b) the period had not ended before the commencement time;

then the show cause notice continues to have effect after the commencement time as if it were a notice given to the occupier of the establishment under subsection 127(2) (for in part cancellation or revocation) or subsection 138(2) (for in full cancellation or revocation) of the new Export Control Act.

Note: The 14 day period for the occupier of the establishment to respond to the show cause notice starts on the day the notice was given to the occupier (see paragraphs 127(3)(c) and 138(3)(b) of the new Export Control Act).

(2) If:

- (a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment notice in writing of the cancellation or revocation, in full, of the registration of the establishment; and
- (b) the cancellation or revocation had not taken effect before the commencement time;

then:

- (c) the Secretary is taken to have decided to revoke the registration under subsection 138(1) of the new Export Control Act; and
- (d) the revocation takes effect after the commencement time in accordance with the notice.

Note: The decision to revoke the registration is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

(3) If:

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- (a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment notice in writing of the cancellation or revocation, in part, of the registration of the establishment; and
- (b) the cancellation or revocation had not taken effect before the commencement time;

then:

- (c) the Secretary is taken to have decided to suspend the registration, in part, in accordance with the notice, under subsection 127(1) of the new Export Control Act; and
- (d) the suspension takes effect after the commencement time in accordance with the notice.

Note: The decision to suspend the registration is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

*Notice given before commencement time by occupier of registered establishment terminating or ceasing registration*

- (4) If:
  - (a) the occupier of a registered establishment had, under an old Export Control Order, notified the Secretary, in writing:
    - (i) of the termination, in full, of the registration of the establishment; or
    - (ii) that the occupier wished the registration to cease; and
  - (b) the notice is received by the Secretary after the commencement time;then the Secretary must, under subsection 137(3) of the new Export Control Act, revoke the registration of the establishment with effect:
  - (c) 7 days after the notice is given to the Secretary; or
  - (d) if a later day is specified in the notice—on that later day.
- (5) If:
  - (a) the occupier of a registered establishment had, under an old Export Control Order, notified the Secretary, in writing, of the termination, in part, of the registration of the establishment; and
  - (b) the notice is received by the Secretary after the commencement time;

then the Secretary must, under subsection 125(5) of the new Export Control Act, suspend the registration of the establishment, in part, in accordance with the notice, with effect:

- (c) 7 days after the notice is given to the Secretary; or
- (d) if a later day is specified in the notice—on that later day.

## **20 Application for registration etc. made but not decided before commencement time**

- (1) This item applies if:
    - (a) an application had been made to the Secretary under an old Export Control Order:
      - (i) to register an establishment; or
      - (ii) to renew the registration of an establishment; or
      - (iii) to vary the registration of an establishment or approve an alteration or addition to an establishment; and
    - (b) no decision on the application had been made, or had been taken to have been made, before the commencement time.
  - (2) After the commencement time:
    - (a) an application referred to in subparagraph (1)(a)(i) is taken to be an application made under section 111 of the new Export Control Act; and
    - (b) an application referred to in subparagraph (1)(a)(ii) is taken to be an application made under section 116 of the new Export Control Act; and
    - (c) an application referred to in subparagraph (1)(a)(iii) is taken to be an application made under subsection 120(1) of the new Export Control Act.
- Note: Section 378 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the application.
- (3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the new Export Control Act do not apply in relation to the application.
  - (4) If, under the old Export Control Order, a decision to refuse the application would have been taken to have been made at the end of a period (the *old consideration period*) specified in the old Export Control Order, then, in working out the consideration period for the

application for the purposes of section 379 of the new Export Control Act:

- (a) the initial consideration period for the application is taken to be the number of days in the old consideration period instead of the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of that Act; and
  - (b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.
- (5) If subitem (4) does not apply in relation to the application, the consideration period for the application for the purposes of section 379 of the new Export Control Act starts on the day the commencement time occurs.

Note: The initial consideration period for an application to which subitem (5) applies is the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of the new Export Control Act.

## **21 Application for registration etc. made and decided but applicant not notified before commencement time**

- (1) This item applies if:
- (a) an application had been made to the Secretary under an old Export Control Order:
    - (i) to register an establishment; or
    - (ii) to renew the registration of an establishment; or
    - (iii) to vary the registration of an establishment or approve an alteration or addition to an establishment; and
  - (b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.
- (2) The Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.
- (3) If the decision was to register an establishment, the establishment is taken to be registered under Chapter 4 of the new Export Control Act.

- (4) If the decision was to register an establishment or renew the registration of an establishment:
- (a) the notice under subitem (2) must state the information referred to in paragraph 114(b) of the new Export Control Act; and
  - (b) the Secretary must also give the applicant a certificate of registration stating the information referred to in paragraph 114(a) of the new Export Control Act.
- (5) If the decision was to vary the registration of an establishment or approve an alteration or addition to an establishment:
- (a) the notice under subitem (2) must state the information referred to in subsection 121(2) of the new Export Control Act; and
  - (b) 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 the commencement time, give the occupier of the establishment a new certificate of registration including the variation or alteration or addition that has been approved.
- (6) If the Secretary had decided, or had been taken to have decided, to refuse the application, the notice under subitem (2) must state:
- (a) the reasons for the decision; and
  - (b) information about the applicant's right to have the decision reviewed.

Note: See item 78 in relation to review of decisions.

## **22 Notice or direction to take action given before commencement time**

- (1) This item applies if:
- (a) a person who was, or who had been, the occupier of a registered establishment before the commencement time had been given notice of the cancellation or revocation of the registration of the establishment under an old Export Control Order; and
  - (b) the person had been given a notice or direction (the *old notice or direction*) under the old Export Control Order

requiring the person to take specified action in relation to any of the following:

- (i) export operations carried out at the establishment;
  - (ii) prescribed goods prepared at the establishment;
  - (iii) official marks, export permits or government certificates that were in the possession, or under the control, of the person; and
- (c) the notice or direction had not been complied with before the commencement time.
- (2) The person must comply with the old notice or direction.

*Fault-based offence*

- (3) The person commits an offence if the person fails to comply with the old notice or direction.

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

*Civil penalty provision*

- (4) The person is liable to a civil penalty if the person fails to comply with the old notice or direction.

Penalty: 240 penalty units.

**23 Variation of documents etc. relating to registration to replace references to old laws**

- (1) This item applies in relation to a registered establishment if the registration of the establishment continues in force after the commencement time under subitem 17(3).
- (2) The Secretary may vary any document or record retained by the Secretary relating to the registration of the establishment to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).
- (3) The Secretary may direct the occupier of the establishment, in writing, to vary the certificate of registration for the establishment, or any notice

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or other document or record retained by the occupier relating to the registration of the establishment, by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

- (4) If the occupier of the establishment is given a direction under subitem (3), the occupier must comply with the direction:
- (a) within 2 years after receiving it; or
  - (b) within any longer period granted by the Secretary on application, in writing, by the occupier.
- (5) Subparagraphs 127(1)(g)(i) and 138(1)(g)(i) of the new Export Control Act apply in relation to the registration of the establishment as if the reference to a direction in those subparagraphs included a reference to a direction given to the occupier of the establishment under subitem (3) of this item.

Note: The registration of the establishment may be suspended or revoked if the occupier of the establishment fails to comply with the direction (see subparagraphs 127(1)(g)(i) and 138(1)(g)(i) of the new Export Control Act).

## **Part 5—Approved arrangements**

### **24 Approved arrangements in force immediately before commencement time**

- (1) This item applies to an arrangement that was approved under an old Export Control Order if the approved arrangement was in force immediately before the commencement time.
- (2) For the purposes of subitem (1), an approved arrangement is taken to have been in force under an old Export Control Order immediately before the commencement time even if the approved arrangement was suspended, in full or in part, at that time.

#### *Approved arrangement continues in force*

- (3) The approved arrangement continues in force after the commencement time:
  - (a) as if it were an approved arrangement under Chapter 5 of the new Export Control Act; and
  - (b) subject to any conditions stated in:
    - (i) the notice of approval of the arrangement; or
    - (ii) any later notice given to the holder of the arrangement by the Secretary before the commencement time.

Note 1: The approved arrangement is also subject to the conditions provided by the new Export Control Act and the conditions prescribed by rules made for the purposes of paragraph 152(1)(b) of that Act (see subsection 152(1) of that Act).

Note 2: The approved arrangement may be varied under item 32 of this Schedule or varied, suspended or revoked under Chapter 5 of the new Export Control Act.

#### *Holder of approved arrangement*

- (4) For the purposes of the application of the new Export Control Act in relation to the approved arrangement, the person to whom the approval of the arrangement had been given under the old Export Control Order is the holder of the approved arrangement.

*Expiry of approved arrangement*

- (5) If there was no expiry date for the approved arrangement under the old Export Control Order, the approved arrangement continues in force unless:
- (a) it is revoked under Part 6 of Chapter 5 of the new Export Control Act; or
  - (b) it is taken to have been revoked under section 188 of that Act.
- (6) If there was an expiry date for the approved arrangement under the old Export Control Order, the approved arrangement continues in force until that expiry date unless:
- (a) it is renewed under Part 3 of Chapter 5 of the new Export Control Act on or before that date; or
  - (b) it is revoked under Part 6 of Chapter 5 of that Act, or is taken to have been revoked under section 188 of that Act, on or before that date.

**25 Suspension of approved arrangement**

*Show cause notice given before commencement time*

- (1) If:
- (a) a notice (a *show cause notice*) had been given to a person under an old Export Control Order to show cause, within a specified period, why an approved arrangement held by the person should not be suspended; and
  - (b) the period had not ended before the commencement time;
- then the show cause notice continues to have effect after the commencement time as if it were a notice given to the person under subsection 171(2) of the new Export Control Act.

Note: The 14 day period for the person to respond to the show cause notice starts on the day the notice was given to the person (see paragraph 171(3)(c) of the new Export Control Act).

*Notice of payment due given before commencement time*

- (2) If:
- (a) a notice had been given, under an old Export Control Order, to a person (the *debtor*) to whom approval of an arrangement

had been given, because the amount of a relevant Commonwealth liability (within the meaning of the old Export Control Order) of the debtor had not been paid by the due date for payment; and

- (b) the period for paying the amount, or entering into an arrangement with the Secretary to pay the amount, had not ended before the commencement time;

then the notice continues to have effect after the commencement time as if it were a notice given to the debtor under paragraph 172(1)(b) of the new Export Control Act.

Note: If, within 8 days after the notice was given to the debtor, the amount of the relevant Commonwealth liability is not paid or the debtor does not enter into an arrangement with the Secretary to pay the amount, the Secretary may suspend the approved arrangement (see subsection 172(1) of the new Export Control Act).

***Approved arrangement suspended immediately before commencement time***

- (3) If:
  - (a) an approved arrangement had been suspended, in full or in part, under an old Export Control Order; and
  - (b) the suspension was in force immediately before the commencement time;

then the approved arrangement is taken to be suspended, in whole or in part (as the case may be), after the commencement time under Part 5 of Chapter 5 of the new Export Control Act.

***Notice of suspension given before commencement time***

- (4) If:
  - (a) the Secretary had, under an old Export Control Order, given a person notice in writing of the suspension, in full or in part, of an approved arrangement held by the person; and
  - (b) the suspension had not taken effect before that time;

then:

- (c) the Secretary is taken to have decided to suspend the approved arrangement, in full or in part in accordance with the notice, under subsection 171(1) of the new Export Control Act; and

- (d) the suspension takes effect after the commencement time in accordance with the notice.

Note 1: The decision to suspend the approved arrangement is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

Note 2: The Secretary may revoke the suspension (see section 175 of the new Export Control Act).

## **26 Revocation of approved arrangement**

### *Notice given before commencement time by Secretary*

- (1) If:

- (a) a notice (a **show cause notice**) had been given to a person under an old Export Control Order to show cause, within a specified period, why the approval of an approved arrangement held by the person should not be revoked; and  
(b) the period had not ended before the commencement time;

then the show cause notice continues to have effect after the commencement time as if it were a notice to revoke the approved arrangement given to the person under subsection 179(2) of the new Export Control Act.

Note: The 14 day period for the person to respond to the show cause notice starts on the day the notice was given to the person (see paragraph 179(3)(b) of the new Export Control Act).

- (2) If:

- (a) the Secretary had, under an old Export Control Order, given a person notice in writing of the revocation, in full, of the approval of an approved arrangement held by the person; and  
(b) the revocation had not taken effect before the commencement time;

then:

- (c) the Secretary is taken to have decided to revoke the approved arrangement under subsection 179(1) of the new Export Control Act; and  
(d) the revocation takes effect after the commencement time in accordance with the notice.

Note: The decision to revoke the approved arrangement is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

- (3) If:
- (a) the Secretary had, under an old Export Control Order, given a person notice in writing of the revocation, in part, of the approval of an approved arrangement held by the person; and
  - (b) the revocation had not taken effect before the commencement time;
- then:
- (c) the Secretary is taken to have decided to suspend the approved arrangement, in part, in accordance with the notice, under subsection 171(1) of the new Export Control Act; and
  - (d) the suspension takes effect after the commencement time in accordance with the notice.

Note: The decision to suspend the approved arrangement is a reviewable decision under Part 2 of Chapter 11 of the new Export Control Act.

*Notice given before commencement time by occupier of registered establishment terminating approved arrangement*

- (4) If:
- (a) the occupier of a registered establishment had, under an old Export Control Order, given written notice to the Secretary of the termination, in full, of the approval of the occupier's approved arrangement for the establishment; and
  - (b) the notice is received by the Secretary after the commencement time;
- then the Secretary must, under subsection 178(3) of the new Export Control Act, revoke the approved arrangement with effect:
- (c) 7 days after the notice is given to the Secretary; or
  - (d) if a later day is specified in the notice—on that later day.
- (5) If:
- (a) the occupier of a registered establishment had, under an old Export Control Order, given written notice to the Secretary of the termination, in part, of the approval of the occupier's approved arrangement for the establishment; and
  - (b) the notice is received by the Secretary after the commencement time;

then the Secretary must, under subsection 169(5) of the new Export Control Act, suspend the approved arrangement, in part, in accordance with the notice, with effect:

- (c) 7 days after the notice is given to the Secretary; or
- (d) if a later day is specified in the notice—on that later day.

**27 Variation of approved arrangement by occupier of registered establishment implemented before commencement time but record not made**

- (1) This item applies if:
  - (a) before the commencement time, the occupier of a registered establishment had implemented a variation of an approved arrangement for the establishment; and
  - (b) a record of the variation was required to be made under an old Export Control Order; and
  - (c) the record was not made before the commencement time.
- (2) As soon as practicable after the commencement time, the person who is the holder of the approved arrangement under the new Export Control Act must comply with subsection 159(2) of that Act in relation to the variation.

**28 Application for approval of proposed arrangement etc. made but not decided before commencement time**

- (1) This item applies if:
  - (a) an application had been made to the Secretary under an old Export Control Order:
    - (i) to approve a proposed arrangement in respect of operations to prepare a kind of prescribed goods for export; or
    - (ii) to renew an approved arrangement; or
    - (iii) to approve a variation of an approved arrangement; and
  - (b) no decision on the application had been made, or had been taken to have been made, before the commencement time.
- (2) After the commencement time:

- (a) an application referred to in subparagraph (1)(a)(i) is taken to be an application made under section 150 of the new Export Control Act; and
- (b) an application referred to in subparagraph (1)(a)(ii) is taken to be an application made under section 155 of the new Export Control Act; and
- (c) an application referred to in subparagraph (1)(a)(iii) is taken to be an application made under subsection 161(1) of the new Export Control Act.

Note: Section 378 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the application.

- (3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the new Export Control Act do not apply in relation to the application.
- (4) If, under the old Export Control Order, a decision to refuse the application would have been taken to have been made at the end of a period (the *old consideration period*) specified in the old Export Control Order, then, in working out the consideration period for the application for the purposes of section 379 of the new Export Control Act:
  - (a) the initial consideration period for the application is taken to be the number of days in the old consideration period instead of the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of that Act; and
  - (b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.
- (5) If subitem (4) does not apply in relation to the application, the consideration period for the application for the purposes of section 379 of the new Export Control Act starts on the day the commencement time occurs.

Note: The initial consideration period for an application to which subitem (5) applies is the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of the new Export Control Act.

**29 Application for approval of proposed arrangement etc. made and decided but applicant not notified before commencement time**

- (1) This item applies if:
- (a) an application had been made to the Secretary under an old Export Control Order:
    - (i) to approve a proposed arrangement in respect of operations to prepare a kind of prescribed goods for export; or
    - (ii) to renew an approved arrangement; or
    - (iii) to approve a variation of an approved arrangement; and
  - (b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.
- (2) The Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.
- (3) If the decision was to approve a proposed arrangement, the arrangement is taken to be an approved arrangement under Chapter 5 of the new Export Control Act.
- (4) If the decision was to approve a proposed arrangement, or renew an approved arrangement, the notice under subitem (2) must state the information referred to in section 153 of the new Export Control Act.
- (5) If the decision was to approve a variation of an approved arrangement, the notice under subitem (2) must state the information referred to in subsection 162(2) of the new Export Control Act.
- (6) If the Secretary had decided, or had been taken to have decided, to refuse the application, the notice under subitem (2) must state:
- (a) the reasons for the decision; and
  - (b) information about the applicant's right to have the decision reviewed.

Note: See item 78 in relation to review of decisions.

### **30 Variation of approved arrangement required by Secretary before commencement time**

- (1) This item applies if:
  - (a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment a written notice requiring the occupier to submit to the Secretary a variation of an approved arrangement for the establishment; and
  - (b) the occupier had not submitted the required variation to the Secretary before the commencement time.
- (2) The notice continues to have effect after the commencement time as if it were a variation notice given under subsection 166(1) of the new Export Control Act.

### **31 Notice or direction to take action given before commencement time**

- (1) This item applies if:
  - (a) a person had been given notice of the revocation of an approved arrangement held by the person under an old Export Control Order; and
  - (b) the person had been given a notice or direction (the *old notice or direction*) under the old Export Control Order requiring the person to take specified action in relation to any of the following:
    - (i) export operations covered by the approved arrangement;
    - (ii) prescribed goods covered by the approved arrangement;
    - (iii) official marks, export permits or government certificates that were in the possession, or under the control, of the person; and
  - (c) the notice or direction had not been complied with before the commencement time.
- (2) The person must comply with the old notice or direction.

*Fault-based offence*
- (3) The person commits an offence if the person fails to comply with the old notice or direction.

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

*Civil penalty provision*

- (4) The person is liable to a civil penalty if the person fails to comply with the old notice or direction.

Penalty: 240 penalty units.

**32 Variation of approved arrangement to replace references to old laws**

- (1) This item applies in relation to an approved arrangement that continues in force after the commencement time under subitem 24(3).
- (2) The Secretary may direct the holder of the approved arrangement, in writing, to vary the approved arrangement by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).
- (3) If the holder of the approved arrangement is given a direction under subitem (2), the holder must comply with the direction:
- (a) within 2 years after receiving it; or
  - (b) within any longer period granted by the Secretary on application, in writing, by the holder.
- (4) Subparagraphs 171(1)(h)(i) and 179(1)(h)(i) of the new Export Control Act apply in relation to the approved arrangement as if the reference to a direction in those subparagraphs included a reference to a direction given to the holder of the approved arrangement under subitem (2) of this item.

Note: The approved arrangement may be suspended or revoked if the holder of the approved arrangement fails to comply with the direction (see subparagraphs 171(1)(h)(i) and 179(1)(h)(i) of the new Export Control Act).

## **Part 6—Export licences**

### **Division 1—Meat and live-stock**

#### **33 Export licences in force immediately before commencement time**

- (1) This item applies to an export licence that was in force under section 10 of old Part 2 of the AMLI Act immediately before the commencement time.
- (2) For the purposes of subitem (1), an export licence is taken to have been in force under section 10 of old Part 2 of the AMLI Act immediately before the commencement time even if the export licence was suspended at that time.

##### *Export licence continues in force*

- (3) The export licence continues in force after the commencement time:
  - (a) as if it had been granted under section 191 of the new Export Control Act; and
  - (b) subject to any conditions stated in the licence.

Note 1: The export licence is also subject to the conditions provided by the new Export Control Act and the conditions prescribed by rules made for the purposes of paragraph 192(1)(b) of that Act (see subsection 192(1) of the new Export Control Act).

Note 2: The export licence may be varied under item 45 of this Schedule or varied, suspended or revoked under Chapter 6 of the new Export Control Act.

##### *Expiry of export licence*

- (4) The export licence continues in force for the period stated in the licence or, if applicable, in the renewal instrument under subsection 22(6) of old Part 2 of the AMLI Act, unless it is renewed under Part 3 of Chapter 6 of the new Export Control Act, or revoked under Part 6 of that Chapter, before the end of that period.

#### **34 Application for export licence etc. made but not decided before commencement time**

- (1) This item applies if:
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- (a) an application had been made to the Secretary under old Part 2 of the AMLI Act or old AMLI Regulations:
      - (i) to grant an export licence; or
      - (ii) to renew an export licence; or
      - (iii) to approve a variation of a live-stock export licence; and
    - (b) no decision on the application had been made, or had been taken to have been made, before the commencement time.
  - (2) After the commencement time:
    - (a) an application referred to in subparagraph (1)(a)(i) is taken to be an application made under section 190 of the new Export Control Act; and
    - (b) an application referred to in subparagraph (1)(a)(ii) is taken to be an application made under section 195 of the new Export Control Act; and
    - (c) an application referred to in subparagraph (1)(a)(iii) is taken to be an application made under subsection 199(1) of the new Export Control Act.
- Note: Section 378 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the application.
- (3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the new Export Control Act do not apply in relation to the application.
  - (4) If the application is to grant an export licence, then, in working out the consideration period for the application for the purposes of section 379 of the new Export Control Act:
    - (a) the initial consideration period for the application is taken to be the period of 2 months starting on the day the application was made instead of the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of that Act; and
    - (b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.
  - (5) If the application is to renew an export licence or approve a variation of a live-stock export licence, the consideration period for the application

for the purposes of section 379 of the new Export Control Act starts on the day the commencement time occurs.

Note: The initial consideration period for an application to which subitem (5) applies is the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of the new Export Control Act.

### **35 Application for export licence etc. made and decided but applicant not notified before commencement time**

- (1) This item applies if:
  - (a) an application had been made to the Secretary under old Part 2 of the AMLI Act or old AMLI Regulations:
    - (i) to grant an export licence; or
    - (ii) to renew an export licence; or
    - (iii) to approve a variation of a live-stock export licence; and
  - (b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.
- (2) The Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.
- (3) If the decision was to grant an export licence, the export licence is taken to have been granted under Chapter 6 of the new Export Control Act.
- (4) If the decision was to grant or renew an export licence, the Secretary must give the applicant an export licence stating the information referred to in subsection 193(2) of the new Export Control Act.
- (5) If the decision was to approve a variation of a live-stock export licence:
  - (a) the notice under subitem (2) must state the information referred to in subsection 200(2) of the new Export Control Act; and
  - (b) if the licence needs to be changed to take account of the variation, the Secretary must, within 7 days after the commencement time, give the holder of the licence a new live-stock export licence including the variation.
- (6) If the Secretary had decided, or had been taken to have decided, to refuse the application, the notice under subitem (2) must state:

- (a) the reasons for the decision; and
- (b) information about the applicant's right to have the decision reviewed.

Note: Applications may be made to the Administrative Appeals Tribunal for review of decisions made before the commencement time to refuse to grant an export licence (see subsection 14(1) of old Part 2 of the AMLI Act and section 7 of the *Acts Interpretation Act 1901*) or a decision made before the commencement time to refuse to approve a variation of a live-stock export licence (see old AMLI Regulations and section 7 of the *Acts Interpretation Act 1901*).

### 36 Directions in force immediately before commencement time

- (1) This item applies if:
  - (a) under paragraph 17(1)(b) of old Part 2 of the AMLI Act, the Secretary had given a written direction to be complied with by the holder of an export licence; and
  - (b) the direction was in force immediately before the commencement time.
- (2) The direction continues in force after the commencement time as if it were a direction given to the holder of the export licence under section 222 of the new Export Control Act.

Note: An application may be made to the Administrative Appeals Tribunal for review of the direction (see subsection 20(2) of old Part 2 of the AMLI Act and section 7 of the *Acts Interpretation Act 1901*).

### 37 Notice to show cause given before commencement time

- (1) This item applies if, before the commencement time, the Secretary had given a written notice (a **show cause notice**) to the holder of an export licence under subsection 23(1) or (2A) of old Part 2 of the AMLI Act.
- (2) If the period of 14 days starting on the day the notice was given had not ended before the commencement time, the show cause notice continues to have effect after the commencement time as if it were a notice given to the holder of the export licence under subsections 205(2) and 212(2) of the new Export Control Act.

Note 1: The 14 day period for the holder of the export licence to respond to the show cause notice starts on the day the notice was given to the holder (see paragraphs 205(3)(c) and 212(3)(b) of the new Export Control Act).

Note 2: The Secretary may suspend the export licence under subsection 205(1) of the new Export Control Act or revoke the export licence under subsection 212(1) of that Act.

- (3) If:
- (a) the export licence had been suspended under subsection 23(5) or paragraph 24(1)(e) or (f) of old Part 2 of the AMLI Act; and
  - (b) the suspension was in force immediately before the commencement time;

then the export licence is taken to be suspended after the commencement time under subsection 205(1) of the new Export Control Act.

Note 1: The suspension may be revoked (see section 209 of the new Export Control Act).

Note 2: Applications may be made to the Administrative Appeals Tribunal for review of decisions made in relation to an export licence under section 23 or subsection 24(1) of old Part 2 of the AMLI Act (see subsections 23(8) and 24(4) of old Part 2 of the AMLI Act and section 7 of the *Acts Interpretation Act 1901*).

### **38 Request to cancel export licence made before commencement time**

If:

- (a) the Secretary had received a written request to cancel an export licence under section 25 of old Part 2 of the AMLI Act; and
- (b) the export licence had not been cancelled before the commencement time;

then the Secretary must, under subsection 211(3) of the new Export Control Act, revoke the export licence as requested.

## **Division 2—Hardwood wood chips and other unprocessed wood**

### **39 Wood export licences in force immediately before commencement time**

- (1) This item applies to a wood export licence that was in force under old Export Control Regulations immediately before the commencement time.

Note 1: For *wood export licence*, see subitem 1(1). Before the commencement time, wood export licences could be granted under the *Export Control (Hardwood Wood Chips)*

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*Regulations 1996* and the Export Control (Unprocessed Wood) Regulations (Statutory Rules 1986 No. 79, as amended).

Note 2: This item does not apply to a wood export licence that had been surrendered under old Export Control Regulations before the commencement time because the wood export licence would not have been in force after it was surrendered.

- (2) For the purposes of subitem (1), a wood export licence is taken to have been in force under old Export Control Regulations immediately before the commencement time even if the wood export licence was suspended at that time.

#### *Wood export licence continues in force*

- (3) The wood export licence continues in force after the commencement time:
- (a) as if it had been granted under section 191 of the new Export Control Act; and
  - (b) subject to any conditions or restrictions specified in the licence.

Note 1: The wood export licence is also subject to the conditions provided by the new Export Control Act and the conditions prescribed by rules made for the purposes of paragraph 192(1)(b) of that Act (see subsection 192(1) of that Act).

Note 2: The export licence may be varied under item 45 of this Schedule or varied, suspended or revoked under Chapter 6 of the new Export Control Act.

#### *Expiry of wood export licence*

- (4) The wood export licence continues in force unless it is revoked under Part 6 of Chapter 6 of the new Export Control Act.

### **40 Application for wood export licence made but not decided before commencement time**

- (1) This item applies if:
- (a) an application had been made to the Secretary under old Export Control Regulations to grant a wood export licence; and
  - (b) no decision on the application had been made before the commencement time.
- (2) After the commencement time, the application is taken to be an application made under section 190 of the new Export Control Act.
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Note: Section 378 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the application.

(3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the new Export Control Act do not apply in relation to the application.

(4) The consideration period for the application for the purposes of section 379 of the new Export Control Act starts on the day the commencement time occurs.

Note: The initial consideration period for the application is the period prescribed for an application of that kind by rules made for the purposes of subsection 379(3) of the new Export Control Act.

#### **41 Application for wood export licence made and decided but applicant not notified before commencement time**

(1) This item applies if:

- (a) an application had been made to the Secretary under old Export Control Regulations to grant a wood export licence; and
- (b) a decision on the application had been made before the commencement time but notice of the decision had not been given to the applicant before that time.

(2) The Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.

(3) If the decision was to grant the wood export licence:

- (a) the wood export licence is taken to have been granted under Chapter 6 of the new Export Control Act; and
- (b) the Secretary must give the applicant an export licence stating the information referred to in subsection 193(2) of that Act.

(4) If the Secretary had decided to refuse the application, the notice under subitem (2) must state:

- (a) the reasons for the decision; and
- (b) information about the applicant's right to have the decision reviewed.

Note: See item 44 in relation to review of decisions.

## 42 Suspension or variation of wood export licence to export hardwood wood chips

- (1) This item applies in relation to a wood export licence to export hardwood wood chips if:
    - (a) the Minister had, under old Export Control Regulations, taken any of the following actions:
      - (i) suspended the wood export licence;
      - (ii) varied a condition or restriction of the wood export licence;
      - (iii) imposed additional conditions or restrictions on the wood export licence; and
    - (b) the period of 28 days starting on the day the action was taken had not ended before the commencement time; and
    - (c) the suspension or variation had not been cancelled, or the additional conditions or restrictions had not been withdrawn, (as the case may be) before the commencement time.
  - (2) If notice of the action taken had not been given to the holder of the wood export licence before the commencement time, the Minister must notify the holder of the wood export licence of the action taken as soon as practicable after the commencement time.
  - (3) The Minister must investigate, or complete the investigation into, the validity of the belief under which the action was taken.
  - (4) If the Minister finds that the belief may not be valid, the Minister must cancel the suspension or variation of conditions or restrictions, or withdraw the additional conditions or restrictions (as the case requires).
  - (5) Despite anything in this item, the action taken by the Minister ceases to have effect at the earliest of the following:
    - (a) the end of the period of 28 days starting on the day the action was taken;
    - (b) if the Minister cancels the suspension or variation of conditions or restrictions, or withdraws the additional conditions or restrictions, under subitem (4)—the day on which the cancellation or withdrawal takes effect;
    - (c) if the conditions of the wood export licence are varied, or the licence is suspended or revoked, under Chapter 6 of the new
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Export Control Act—the day when the variation, suspension or revocation under that Chapter takes effect.

Note: A decision to vary the conditions of the wood export licence, or suspend or revoke the licence, under Chapter 6 of the new Export Control Act is a reviewable decision under Part 2 of Chapter 11 of that Act.

#### **43 Suspension or variation of wood export licence to export wood chips (other than hardwood wood chips) or other unprocessed wood**

- (1) This item applies in relation to a wood export licence to export wood chips (other than hardwood wood chips) or other unprocessed wood if:
    - (a) the Minister had, under old Export Control Regulations, taken any of the following actions:
      - (i) suspended the wood export licence;
      - (ii) varied a condition of the wood export licence;
      - (iii) imposed additional conditions on the wood export licence; and
    - (b) the period of 28 days starting on the day the action was taken had not ended before the commencement time; and
    - (c) the suspension or variation had not been removed, or the additional conditions had not been withdrawn, (as the case may be) before the commencement time.
  - (2) If notice of the action taken had not been given to the holder of the wood export licence before the commencement time, the Minister must notify the holder of the wood export licence of the action taken as soon as practicable after the commencement time.
  - (3) The Minister must investigate, or complete the investigation into, the matter in respect of which the action was taken.
  - (4) If the Minister has completed the investigation into the matter in respect of which the action was taken and does not find any grounds for revoking the wood export licence, the Minister must remove the suspension or variation of conditions or withdraw the additional conditions (as the case requires).
  - (5) Despite anything in this item, the action taken by the Minister ceases to apply at the earliest of the following:
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- (a) the end of the period of 28 days starting on the day the action was taken;
- (b) if the Minister removes the suspension or variation of conditions, or withdraws the additional conditions, under subitem (4)—the day on which the removal or withdrawal takes effect;
- (c) if the conditions of the wood export licence are varied, or the licence is suspended or revoked, under Chapter 6 of the new Export Control Act—the day when the variation, suspension or revocation under that Chapter takes effect.

Note: A decision to vary the conditions of the wood export licence, or suspend or revoke the licence, under Chapter 6 of the new Export Control Act is a reviewable decision under Part 2 of Chapter 11 of that Act.

#### **44 Review of decisions made under old Export Control Regulations providing for wood export licences**

- (1) This item applies in relation to decisions made under old Export Control Regulations that made provision for and in relation to wood export licences.

Note: See the *Export Control (Hardwood Wood Chips) Regulations 1996* and the *Export Control (Unprocessed Wood) Regulations (Statutory Rules 1986 No. 79, as amended)*.

- (2) Despite the repeal of the old Export Control Act by Schedule 1 to this Act, the old Export Control Regulations, to the extent that they made provision for or in relation to reconsideration by the Minister of certain decisions (*initial decisions*) and review by the Administrative Appeals Tribunal of reviewable decisions, continue to apply in relation to:
  - (a) an initial decision made under the old Export Control Regulations before the commencement time; and
  - (b) a decision of the Minister (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

### **Division 3—Other provisions**

#### **45 Variation of export licence to replace references to old laws**

- (1) This item applies in relation to:
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- (a) an export licence that continues in force after the commencement time under subitem 33(3); and
    - (b) a wood export licence that continues in force after the commencement time under subitem 39(3).
  - (2) The Secretary may vary the export licence to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).
  - (3) The Secretary may direct the holder of the export licence, in writing, to vary the export licence by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).
  - (4) If the holder of the export licence is given a direction under subitem (3), the holder must comply with the direction:
    - (a) within 2 years after receiving it; or
    - (b) within any longer period granted by the Secretary on application, in writing, by the holder.
  - (5) Subparagraphs 205(1)(e)(i) and 212(1)(e)(i) of the new Export Control Act apply in relation to the export licence as if the reference to a direction in those subparagraphs included a reference to a direction given to the holder of the export licence under subitem (3) of this item.
- Note: The export licence may be suspended or revoked if the holder of the licence fails to comply with the direction (see subparagraphs 205(1)(e)(i) and 212(1)(e)(i) of the new Export Control Act).

## Part 7—Export permits

### 46 Export permits in force immediately before commencement time

- (1) This item applies to an export permit that had been granted or issued to a person under an old Export Control Order if the export permit was in force immediately before the commencement time.
- (2) The export permit continues in force after the commencement time:
  - (a) as if it had been issued to the person under paragraph 225(1)(a) of the new Export Control Act; and
  - (b) subject to any conditions specified in the export permit and any other conditions that were applicable to the export permit.
- (3) The export permit remains in force until the end of the period of 28 days after it was issued, unless it is revoked earlier under section 233 of the new Export Control Act.

Note: The export permit may be varied, suspended or revoked under Part 3 of Chapter 7 of the new Export Control Act.

### 47 Application for export permit made but not decided before commencement time

- (1) This item applies if:
  - (a) a person had applied under an old Export Control Order for the grant or issue of an export permit for goods; and
  - (b) no decision on the application had been made before the commencement time.
- (2) The application is taken after the commencement time to be an application made under section 224 of the new Export Control Act for an export permit for the goods.
- (3) Section 239 of the new Export Control Act does not apply in relation to the application.

Note: Section 240 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to an application to which this item applies.

**48 Request to vary export permit made but not decided before commencement time**

- (1) This item applies if:
  - (a) a person had, under an old Export Control Order, requested the Secretary, in writing, to vary an export permit; and
  - (b) no decision on the request had been made before the commencement time.
- (2) The request is taken after the commencement time to be an application referred to in paragraph 229(3)(b) of the new Export Control Act.
- (3) Section 239 of the new Export Control Act does not apply in relation to the application.

Note: Section 240 of the new Export Control Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to an application to which this item applies.

**49 Request to vary export permit made and decided but decision not notified before commencement time**

- (1) This item applies if:
  - (a) a person had, under an old Export Control Order, requested the Secretary, in writing, to vary an export permit; and
  - (b) a decision on the request had been made before the commencement time but notice of the decision had not been given to the person before that time.
- (2) If the decision was to vary the export permit, the Secretary must issue the varied export permit to the person.
- (3) If the decision was to refuse the request, the Secretary must give the person written notice of the decision. The notice must include the reasons for the decision.

**50 Variation of export permit by Secretary before commencement time but holder not notified**

- (1) This item applies if:
  - (a) the Secretary had varied an export permit under an old Export Control Order (other than on request by a person); and

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- (b) notice of the variation had not been given before the commencement time.
- (2) The Secretary must:
- (a) issue the varied export permit to the holder of the export permit; and
  - (b) give the holder a written notice stating the reasons for the variation.

## **Part 8—Other matters relating to export**

### **Division 1—Notices of intention to export**

#### **51 Notice of intention to export prescribed goods given before commencement time**

- (1) This item applies if:
  - (a) a person had given the Secretary a notice of intention to export a kind of prescribed goods under an old Export Control Order; and
  - (b) the goods had not been exported before the commencement time.
- (2) The notice of intention to export the goods continues in force after the commencement time as if it were a notice of intention to export the goods given in compliance with subsection 243(1) of the new Export Control Act.

**Note:** Section 244 of the new Export Control Act (which requires additional or corrected information in relation to a notice of intention to export a consignment of goods to be given in certain circumstances) applies in relation to a notice of intention to export goods to which this item applies.

#### **52 Notice to vary, or give new, notice of intention to export prescribed goods given before commencement time**

- (1) This item applies if:
  - (a) a person had given the Secretary a notice of intention to export a kind of prescribed goods under an old Export Control Order; and
  - (b) before the commencement time, the Secretary had given the person a notice requiring the person:
    - (i) to vary the notice of intention to export the goods; or
    - (ii) to give the Secretary a new notice of intention to export the goods; and
  - (c) the person had not complied with the Secretary's notice before the commencement time.

- (2) The person must comply with the Secretary's notice as soon as practicable after the commencement time.

## **Division 2—Trade descriptions**

### **53 Trade descriptions applied to goods before commencement time**

- (1) This item applies to a trade description that was applied in accordance with an old Export Control Order to:
- (a) goods that were exported before the commencement time but had not been presented to an importing country before that time; or
  - (b) goods that are exported after the commencement time.
- (2) For the purposes of subitem (1), a trade description was applied to goods in accordance with an old Export Control Order if it was:
- (a) applied directly to the goods; or
  - (b) applied to any carton, can or packaging material containing the goods; or
  - (c) applied to, or stated in, any document relating to the goods; or
  - (d) applied to any covering, label, reel or other thing used in connection with the goods; or
  - (e) applied in any other way permitted by the old Export Control Order.
- (3) The trade description is taken after the commencement time to be applied to the goods for the purposes of the new Export Control Act.

## **Division 3—Official marks**

### **54 Official marks applied to goods before commencement time**

- (1) This item applies if:
- (a) a stamp, seal, label or mark that was an official mark under an old Export Control Order was applied to goods before the commencement time; and

- (b) the goods are presented to an importing country after the commencement time.
- (2) The stamp, seal, label or mark has effect after the commencement time as if it were an official mark for the purposes of the new Export Control Act.

#### **Division 4—Tariff rate quota orders**

##### **55 Tariff rate quota orders in force immediately before commencement time**

- (1) An order made by the Secretary, or a delegate of the Secretary, under section 23A of the old Export Control Act that was in force immediately before the commencement time continues in force after that time as if the order were rules (*tariff rate quota rules*) made by the Secretary under subsection 432(1) of the new Export Control Act for the purposes of section 264 of that Act.
- (2) After the commencement time:
  - (a) a reference in the name of a set of tariff rate quota rules to “order” is taken to be a reference to “rules”; and
  - (b) a reference in a provision of a set of tariff rate quota rules to section 23A of the *Export Control Act 1982* is taken to be a reference to section 264 of the *Export Control Act 2020*.
- (3) This item does not prevent tariff rate quota rules from being amended or repealed after the commencement of this item.

## **Part 9—Powers and officials**

### **Division 1—Audits**

#### **56 Audit required before commencement time but not commenced before that time**

- (1) This item applies if:
  - (a) the Secretary had, under an old Export Control Order, required an audit of operations, or of any other matter, related to a kind of prescribed goods to be conducted; and
  - (b) the audit had not commenced before the commencement time.
- (2) The requirement for the audit to be conducted is taken to have been made under subsection 266(1) or 267(1) of the new Export Control Act (as the case requires).

#### **57 Audit in progress etc. immediately before commencement time**

- (1) This item applies if:
  - (a) the Secretary had, under an old Export Control Order, required an audit of operations, or of any other matter, related to a kind of goods to be conducted; and
  - (b) either:
    - (i) the audit had commenced before the commencement time but had not been completed before that time; or
    - (ii) the audit had been completed before the commencement time but the process to be followed after the completion of the audit had not been completed before the commencement time.
- (2) Despite the repeal of the old Export Control Order, the provisions of that Order that provided for and in relation to the audit, and, if applicable, the process to be followed after its completion, continue to apply in relation to the audit and that process.

## **58 Approved auditors**

- (1) This item applies to a person if:
  - (a) the person was approved as an auditor to conduct audits of operations, or any other matter, related to a kind of goods under an old Export Control Order; and
  - (b) the approval was in force immediately before the commencement time.
- (2) The approval continues in force after the commencement time as if it were an approval under subsection 273(1) of the new Export Control Act of the person to conduct audits under Part 1 of Chapter 9 of that Act of the operations or other matters covered by the approval.
- (3) If the approval was subject to conditions, the approval continues to be subject to those conditions after the commencement time.
- (4) The approval remains in force for the period of effect of the approval remaining at the commencement time unless it is revoked earlier under rules made for the purposes of subsections 273(6) and (7) of the new Export Control Act.

## **Division 2—Verifications in relation to compliance**

### **59 Compliance verifications performed before commencement time may be taken into account after that time**

- (1) This item applies in relation to goods if:
  - (a) a person had made a written verification, or given a written verification to the Secretary, under an old Export Control Order that:
    - (i) the requirements of the old Export Control Act and the old Export Control Order that applied in relation to the goods had been complied with; and
    - (ii) importing country requirements relating to the goods had been met; and
  - (b) a government certificate had not been issued in relation to the goods, or an export permit had not been given for the goods, before the commencement time.

- (2) The verification under the old Export Control Order may be taken into account in deciding whether to issue a government certificate in relation to the goods, or an export permit for the goods, under the new Export Control Act.

### **Division 3—Powers of the Secretary**

#### **60 Notice requiring information or documents given before commencement time**

If:

- (a) the Secretary had given a written notice to a person under subsection 11Q(1) of the old Export Control Act or subsection 51(1) of old Part 2 of the AMLI Act; and
- (b) the period stated in the notice had not ended before the commencement time; and
- (c) the person had not complied with the notice before the commencement time;

then the notice continues to have effect after the commencement time as if it were a notice given to the person under subsection 285(1) of the new Export Control Act.

#### **61 Delegation and subdelegation of Secretary's functions and powers under this Act**

- (1) Section 288 of the new Export Control Act applies in relation to the Secretary's functions and powers under this Act in the same way as that section applies in relation to the Secretary's powers and functions under the new Export Control Act.
- (2) However:
- (a) the power to make rules under item 92 of this Schedule must not be delegated under subsection 288(1) of the new Export Control Act; and
  - (b) the function under item 89 of this Schedule (which deals with reports to Parliament about live-stock) must not be subdelegated under subsection 288(2) of the new Export Control Act.

## **62 Directions given before commencement time**

- (1) This item applies if:
  - (a) the Secretary or an authorised officer had given a direction to a person under an old Export Control Order; and
  - (b) the direction had not been complied with before the commencement time.
- (2) The person must comply with the direction.

Penalty: 50 penalty units.

## **Division 4—Authorised officers**

### **63 Authorised officers (other than third party authorised officers) under old Export Control Act**

- (1) This item applies in relation to a person who was appointed to be an authorised officer, or persons included in a class of persons who were appointed to be authorised officers, under section 20 of the old Export Control Act if:
  - (a) the person, or each person included in the class of persons, was an officer or employee of a Commonwealth body or a State or Territory body; and
  - (b) the appointment was in force immediately before the commencement time.
- (2) The person, or each person included in the class of persons, is taken, at the commencement time, to have been duly authorised by the Secretary under subsection 291(1) of the new Export Control Act to be an authorised officer under that Act.
- (3) For the purposes of subitem (2), the instrument appointing the person, or persons included in the class of persons, under section 20 of the old Export Control Act continues in force after the commencement time as if it were an instrument of authorisation under subsection 291(1) of the new Export Control Act authorising the person, or each person in the class of persons, to be an authorised officer under that Act.
- (4) If the new Export Control Act or rules made under that Act confer a function or power (a *corresponding function or power*) on an authorised officer that is substantially similar to a function or power that

a person in relation to whom this item applies was authorised to perform or exercise as an authorised officer under the old Export Control Act, old Export Control Regulations or an old Export Control Order, then the instrument of authorisation of the person is taken to specify that corresponding function or power in relation to the person.

- (5) The Secretary may vary the instrument of authorisation to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

#### **64 Third party authorised officers under old Export Control Act**

- (1) This item applies in relation to a person who was appointed to be an authorised officer, or persons included in a class of persons who were appointed to be authorised officers, under section 20 of the old Export Control Act if:
- (a) the person, or each person included in the class of persons, was not an officer or employee of a Commonwealth body or a State or Territory body; and
  - (b) the appointment was in force immediately before the commencement time.
- (2) The person, or each person included in the class of persons, is taken, at the commencement time, to have been duly authorised by the Secretary under paragraph 291(6)(a) of the new Export Control Act to be a third party authorised officer under that Act.
- (3) For the purposes of subitem (2), the instrument appointing the person, or persons included in the class of persons, under section 20 of the old Export Control Act continues in force after the commencement time as if it were an instrument of authorisation under paragraph 291(6)(a) of the new Export Control Act authorising the person, or each person in the class of persons, to be a third party authorised officer under that Act.
- (4) If the new Export Control Act or rules made under that Act confer a function or power (a **corresponding function or power**) on an authorised officer that is substantially similar to a function or power that a person in relation to whom this item applies was authorised to perform or exercise as an authorised officer under the old Export Control Act,
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old Export Control Regulations or an old Export Control Order, then the instrument of authorisation of the person is taken to specify that corresponding function or power in relation to the person.

- (5) The Secretary may vary the instrument of authorisation to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

## **65 Authorised officers under old Part 2 of the AMLI Act**

- (1) This item applies in relation to a person who was appointed to be an authorised officer, or a class of persons who were appointed to be authorised officers, under subsection 49(1) of old Part 2 of the AMLI Act if:
- (a) the person, or each person included in the class of persons, was an officer or employee of a Commonwealth body or a State or Territory body; and
  - (b) the appointment was in force immediately before the commencement time.
- (2) The person, or each person included in the class of persons, is taken, at the commencement time, to have been duly authorised by the Secretary under subsection 291(1) of the new Export Control Act to be an authorised officer under that Act.
- (3) For the purposes of subitem (2), the instrument appointing the person, or the class of persons including the person, under subsection 49(1) of old Part 2 of the AMLI Act continues in force after the commencement time as if it were an instrument of authorisation under subsection 291(1) of the new Export Control Act authorising the person, or each person in the class of persons, to be an authorised officer under that Act.
- (4) The instrument of authorisation is taken to specify the functions and powers conferred on an authorised officer by Parts 2 and 3, and Division 2 of Part 11, of Chapter 10 of the new Export Control Act.
- (5) The Secretary may vary the instrument of authorisation to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the new Export Control Act or rules

made under that Act or a provision of the new Export Control Act or rules made under that Act (as the case requires).

## **66 Directions to take action given by authorised officer before commencement time**

- (1) This item applies if:
  - (a) an authorised officer had given a direction under old Export Control Regulations or an old Export Control Order requiring the manager of an accredited property, the occupier of a registered establishment, the holder of an approved arrangement, the holder of an export licence or the holder of an export permit to take specified action in relation to a kind of prescribed goods; and
  - (b) the direction had not been complied with, or had not been fully complied with, before the commencement time.
- (2) The direction continues in force after the commencement time as if it were a direction given to the relevant person under subsection 305(1) of the new Export Control Act.

## **67 Identity cards**

- (1) An identity card that had been issued to an authorised officer under subsection 21(1) of the old Export Control Act and was in the possession of the authorised officer immediately before the commencement time is taken after that time:
  - (a) to have been issued to the authorised officer under subsection 306(1) of the new Export Control Act; and
  - (b) to comply with subsection 306(2) of that Act.
- (2) An identity card that had been given to an authorised officer under subsection 49(2) of old Part 2 of the AMLI Act and was in the possession of the authorised officer immediately before the commencement time is taken after that time:
  - (a) to have been issued to the authorised officer under subsection 306(1) of the new Export Control Act; and
  - (b) to comply with subsection 306(2) of that Act.

## **Division 5—Approved export programs**

### **68 Costs of authorised officers in relation to approved export programs**

- (1) This item applies if, immediately before the commencement time, an exporter was liable to pay the reasonable costs of any activities undertaken by an authorised officer under section 9D or 9E of the old Export Control Act in relation to an approved export program.
- (2) The new Export Control Act applies in relation to the amount payable as if:
  - (a) the amount were a cost-recovery charge; and
  - (b) rules made for the purposes of section 400 of the new Export Control Act prescribed that the time when the amount is due and payable is when a demand for payment of the amount is made; and
  - (c) the person liable to pay the amount were the exporter.

### **69 Directions to authorised officers to undertake approved export program activities**

A direction that was in force under subsection 9D(1) of the old Export Control Act immediately before the commencement time continues in force after the commencement time as if it were a direction given under subsection 313(1) of the new Export Control Act.

### **70 Directions to authorised officers to monitor, review or audit approved export program activities**

A direction to monitor, review or audit a matter that was in force under subsection 9E(1) of the old Export Control Act immediately before the commencement time continues in force after the commencement time as if it were a direction given under subsection 314(1) of the new Export Control Act to monitor or review the corresponding matter referred to in paragraph 314(1)(a) or (b) of that Act.

**71 Directions to accredited veterinarian to remedy deficiency in undertaking approved export program**

A direction that was in force under subsection 9E(2) of the old Export Control Act immediately before the commencement time, and that complied with subsection 9E(3) of that Act, continues in force after the commencement time as if it were a direction given under subsection 314(2) of the new Export Control Act that complies with subsection 314(3) of that Act.

## **Part 10—Compliance and enforcement**

### **72 Monitoring compliance with and investigation of offences etc. against old Export Control Law**

#### *Application of Chapter 10 of the new Export Control Act*

- (1) Parts 1 to 6 of Chapter 10 of the new Export Control Act, Division 2 of Part 11 of that Chapter, and any related provisions apply, with the modifications set out in subitems (2) and (3) of this item:
  - (a) for the purpose of determining:
    - (i) whether this Act or an old Export Control Law has been, or is being, complied with; or
    - (ii) whether information provided for the purposes of this Act or an old Export Control Law is correct; or
  - (b) if an authorised officer suspects on reasonable grounds that there may be on any premises:
    - (i) a thing with respect to which an offence against this Act or an old Export Control Law has been committed or is suspected, on reasonable grounds, to have been committed, or a civil penalty provision of this Act has been contravened or is suspected, on reasonable grounds, to have been contravened; or
    - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of an offence against this Act or an old Export Control Law, or evidence as to the contravention of a civil penalty provision of this Act; or
    - (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing an offence against this Act or an old Export Control Law, or for the purpose of contravening a civil penalty provision of this Act.
- (2) The provisions of the new Export Control Act referred to in subitem (1) apply under that subitem as if:
  - (a) in those provisions, the expression “this Act” included a reference to this Act and each old Export Control Law; and

- (b) the following were relevant premises for the purposes of Part 5 of Chapter 10 of the new Export Control Act:
  - (i) premises that were registered premises or a registered establishment under an old Export Control Order;
  - (ii) a property that was an accredited property under an old Export Control Order.

Note: Applying the provisions of the new Export Control Act referred to in subitem (1) as described in subitem (2) also applies Parts 2 and 3 of the Regulatory Powers Act in relation to this Act and each old Export Control Law.

***Additional power for monitoring compliance with old Part 2 of the AMLI Act***

- (3) Without limiting subitems (1) and (2), the power to stop and detain a conveyance that an authorised officer suspects on reasonable grounds contains meat or live-stock, or records relating to meat or live-stock, is taken to be an additional monitoring power for the purpose of determining, under Part 2 of the Regulatory Powers Act, as it applies under this item:
  - (a) whether old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order has been complied with; or
  - (b) whether information provided for the purposes of old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order is correct.

***Civil penalties***

- (4) Part 7 of Chapter 10 of the new Export Control Act, and any related provisions apply, in relation to contraventions of civil penalty provisions of this Act, as if in that Part, the expression “this Act” included a reference to this Act.

Note: Applying Part 7 of Chapter 10 of the new Export Control Act as described in subitem (4) also applies Part 4 of the Regulatory Powers Act in relation to civil penalty provisions of this Act.

***References to Chapter 10 of the new Export Control Act***

- (5) A reference in Chapter 10 of the new Export Control Act, as it applies under this item, to that Chapter or a provision of that Chapter is to be read as a reference to that Chapter or that provision as it applies under this item.

### **73 Warrants in force under old Export Control Law immediately before commencement time**

#### *Monitoring warrants*

- (1) If:
- (a) a warrant had been issued under section 10B of the old Export Control Act; and
  - (b) the warrant was in force immediately before the commencement time;
- the warrant continues in force after that time as if it were a monitoring warrant within the meaning of the new Export Control Act.
- (2) However, paragraph 32(4)(f) of the Regulatory Powers Act (which deals with when a monitoring warrant ceases to be in force), as it applies under item 72 of this Schedule, does not apply in relation to a warrant referred to in subitem (1) of this item.

#### *Offence-related warrants*

- (3) If:
- (a) a warrant had been issued under section 10E of the old Export Control Act or section 37 of old Part 2 of the AMLI Act; and
  - (b) the warrant was in force immediately before the commencement time;
- the warrant continues in force after that time as if it were an investigation warrant referred to in paragraph (a) or (b) (as the case requires) of the definition of *investigation warrant* in section 12 of the new Export Control Act.
- (4) However, paragraph 70(4)(j) of the Regulatory Powers Act (which deals with when an investigation warrant ceases to be in force), as it applies under item 72 of this Schedule, does not apply in relation to a warrant referred to in subitem (3) of this item.

## **74 Application for warrant made but not decided before commencement time**

### *Monitoring warrant*

- (1) If:
- (a) an application for a warrant had been made under subsection 10B(1) of the old Export Control Act; and
  - (b) no decision on the application had been made before the commencement time;

the application is taken to be an application made under subsection 32(1) of the Regulatory Powers Act, as that subsection applies under item 72 of this Schedule.

### *Offence-related warrant*

- (2) If:
- (a) an application for a warrant had been made under subsection 10E(1) of the old Export Control Act or subsection 37(1) of old Part 2 of the AMLI Act; and
  - (b) no decision on the application had been made before the commencement time;

the application is taken to be an application made under subsection 70(1) of the Regulatory Powers Act, as that subsection applies under item 72 of this Schedule.

## **75 Dealing with things seized under old Export Control Act or old Part 2 of the AMLI Act**

- (1) This item applies in relation to a thing if:
- (a) it had been seized under Part III of the old Export Control Act and was being retained, in accordance with section 11H of that Act, immediately before the commencement time; or
  - (b) it had been seized under section 34 or 35 of old Part 2 of the AMLI Act and was being retained, in accordance with section 44 of that Act, immediately before the commencement time.

- (2) Sections 66, 67 and 68 of the Regulatory Powers Act apply in relation to the thing as if it had been seized under Part 3 of that Act, as that Part applies under item 72 of this Schedule.
- (3) If an order authorising a person to keep a thing was in force under subsection 11J(2) of the old Export Control Act, or subsection 45(2) of old Part 2 of the AMLI Act, immediately before the commencement time, the order continues in force after that time as if it were an order made under subsection 67(4) of the Regulatory Powers Act, as that subsection applies under item 72 of this Schedule.
- (4) If:
  - (a) an application for an order that a thing be kept for a further period had been made under subsection 11J(1) of the old Export Control Act or subsection 45(1) of old Part 2 of the AMLI Act; and
  - (b) no decision on the application had been made before the commencement time;the application is taken to be an application made under subsection 67(1) of the Regulatory Powers Act, as that subsection applies under item 72 of this Schedule.

**76 Premises entered under old Export Control Law before commencement time—requirement to give information or produce documents**

- (1) This item applies if:
  - (a) an authorised officer had, under subsection 11P(1) of the old Export Control Act or subsection 47(1) of old Part 2 of the AMLI Act, required a person to give information to the officer or produce documents referred to by the officer; and
  - (b) the requirement had not been complied with before the commencement time.
- (2) The requirement continues to have effect after the commencement time as if it were a requirement under subsection 24(3) of the Regulatory Powers Act, as that subsection applies under item 72 of this Schedule.

**77 Indictable offences under old Export Control Act**

Despite the repeal of the old Export Control Act by Schedule 1 to this Act, section 17 of that Act continues to apply in relation to proceedings in respect of an offence against section 7A, 8, 9, 14 or 15 of that Act that:

- (a) were not finally determined before the commencement time;  
or
- (b) are instituted after the commencement time.

## **Part 11—Miscellaneous**

### **Division 1—Review of decisions**

#### **78 Review of decisions made under old Export Control Order**

Despite the repeal of the old Export Control Act by Schedule 1 to this Act, an old Export Control Order, to the extent that it made provision for or in relation to reconsideration by the Secretary of initial decisions and review by the Administrative Appeals Tribunal of reviewable decisions, continues to apply in relation to:

- (a) an initial decision that was made before the commencement time; and
- (b) a decision of the Secretary (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

Note: See, for example, Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*, Divisions I and II of Part 10 of the *Export Control (Meat and Meat Products) Orders 2005* and old Export Control Orders dealing with tariff rate quotas (as those Orders were in force immediately before the commencement time).

### **Division 2—Confidentiality of information**

#### **79 Confidentiality of information obtained under, or in accordance with, old Export Control Law**

- (1) Information obtained under, or in accordance with, or in performing functions or exercising powers under, an old Export Control Law is taken to be protected information for the purposes of the new Export Control Act.

Note: Part 3 of Chapter 11 of the new Export Control Act applies in relation to the information.

- (2) Section 391 of the new Export Control Act has effect as if it also applied in relation to information obtained by a person in performing functions or exercising powers under Part III of the old Export Control Act or old Part 2 of the AMLI Act.

## Division 3—Cost recovery

### 80 Fees required to be paid before commencement time

The new Export Control Act applies as if:

- (a) the following were cost-recovery charges:
  - (i) fees required to be paid by the *Export Control (Fees) Order 2015* (as in force immediately before the commencement time);
  - (ii) late payment fees required to be paid by the *Export Control (Fees) Order 2015* (as in force immediately before the commencement time);
  - (iii) late payment fees prescribed by regulations made for the purposes of subsection 11(1) of the *Export Charges (Collection) Act 2015* (as in force immediately before the commencement time); and
- (b) rules made for the purposes of section 400 of the new Export Control Act prescribed that the time when a fee described in subparagraph (a)(i) is due and payable is when a demand for payment of the fee is made; and
- (c) rules made for the purposes of section 403 of the new Export Control Act specified that a late payment fee described in subparagraph (a)(ii) or (iii) was due and payable at the commencement time; and
- (d) the person liable to pay an amount treated by subparagraph (a)(i) or (ii) as a cost-recovery charge were the person specified by the *Export Control (Fees) Order 2015* (as in force immediately before the commencement time) as the person who was liable to pay the amount; and
- (e) the person liable to pay an amount treated by subparagraph (a)(iii) as a cost-recovery charge were the person prescribed by regulations made for the purposes of subsection 11(3) of the *Export Charges (Collection) Act 2015* (as in force immediately before the commencement time) as the person who was liable to pay the amount.

Note: Division 4 of Part 4 of Chapter 11 of the new Export Control Act provides for the recovery of cost-recovery charges. Section 403 of that Act allows rules to specify a late payment fee that is due and payable if a cost-recovery charge is not paid at or before the time prescribed by the rules as the time the cost-recovery charge is due and payable.

## **81 Export control charges imposed before commencement time**

Despite the repeal of the *Export Charges (Collection) Act 2015* by Schedule 1 to this Act, the *Export Charges (Collection) Act 2015* (as in force immediately before the commencement time) continues to apply after that time in relation to an export charge imposed before that time.

## **82 Export inspection charges imposed before commencement time**

- (1) Despite the repeal of the *Export Inspection Charges Collection Act 1985* by Schedule 1 to this Act, the *Export Inspection Charges Collection Act 1985* (as in force immediately before the commencement time) continues to apply after that time in relation to charge imposed before that time.
- (2) Despite the repeal of the *Export Inspection (Establishment Registration Charges) Act 1985* by Schedule 1 to this Act, the *Export Inspection (Establishment Registration Charges) Act 1985* (as in force immediately before the commencement time) continues to apply after that time in relation to charge imposed before that time.
- (3) Despite the repeal of the *Export Inspection (Quantity Charge) Act 1985* by Schedule 1 to this Act, the *Export Inspection (Quantity Charge) Act 1985* (as in force immediately before the commencement time) continues to apply after that time in relation to charge imposed before that time.
- (4) Despite the repeal of the *Export Inspection (Service Charge) Act 1985* by Schedule 1 to this Act, the *Export Inspection (Service Charge) Act 1985* (as in force immediately before the commencement time) continues to apply after that time in relation to charge imposed before that time.

## Division 4—Records

### 83 Records required to be retained before commencement time

- (1) This item applies in relation to a record that a person was required to retain under an old Export Control Law if the retention period had not ended before the commencement time.
- (2) Subsection 408(3) of the new Export Control Act applies after the commencement time in relation to the record as if the requirement to retain the record were provided by rules made for the purposes of subsection 408(1) or (2) of that Act.

## Division 5—Analysts and samples

### 84 Laboratories and other analysts under old Export Control Order or old Part 2 of the AMLI Act

*Persons or bodies permitted to conduct analysis for the purposes of old Export Control Order*

- (1) A person or body (including a laboratory) that, immediately before the commencement time, was permitted to analyse, inspect or examine a sample of goods or any other thing for the purposes of an old Export Control Order is taken, at the commencement time, to have been appointed by the Secretary, under subsection 413(1) of the new Export Control Act, to be an analyst for the purposes of that Act.

*Analysts appointed under old Part 2 of the AMLI Act*

- (2) If:
  - (a) a person had been appointed, under subsection 53(1) of old Part 2 of the AMLI Act, to be an analyst for the purposes of that Part; and
  - (b) the appointment was in force immediately before the commencement time;

then the person is taken, at the commencement time, to have been appointed by the Secretary, under subsection 413(1) of the new Export Control Act, to be an analyst for the purposes of that Act.

## **85 Certificates of analysis given under old Export Control Law**

### *Certificates given under old Export Control Order*

- (1) Subitem (2) applies if:
  - (a) before the commencement time, an authorised officer or a person at a laboratory:
    - (i) had analysed goods or another thing in relation to which an offence against the old Export Control Act, old Export Control Regulations or an old Export Control Order, was or is alleged to have been committed; and
    - (ii) had given a certificate in respect of the analysis; and
  - (b) proceedings for the offence:
    - (i) had been instituted, but had not been finally determined, before the commencement time; or
    - (ii) had not been instituted before the commencement time.
- (2) The new Export Control Act applies in relation to the certificate and the proceedings for the offence as if:
  - (a) the certificate had been given under section 414 of the new Export Control Act; and
  - (b) a reference in section 415 of the new Export Control Act to “this Act” included a reference to the old Export Control Act, old Export Control Regulations or old Export Control Order; and
  - (c) in subsection 415(2) of the new Export Control Act, the words “At least 14 days before” were omitted and the word “Before” were substituted.

### *Certificates given under old Part 2 of the AMLI Act*

- (3) Subitem (4) applies if:
  - (a) before the commencement time, an analyst had signed a certificate, under subsection 53(2) of old Part 2 of the AMLI Act, in respect of a substance in relation to which an offence against that Part was or is alleged to have been committed; and
  - (b) proceedings for the offence:

- (i) had been instituted, but had not been finally determined, before the commencement time; or
  - (ii) had not been instituted before the commencement time.
- (4) The new Export Control Act applies in relation to the certificate and the proceedings for the offence as if:
  - (a) the certificate had been given under section 414 of the new Export Control Act; and
  - (b) a reference in section 415 of the new Export Control Act to “this Act” included a reference to old Part 2 of the AMLI Act; and
  - (c) in subsection 415(2) of the new Export Control Act, the words “At least 14 days before” were omitted and the word “Before” were substituted.

**86 Certificates of analysis given under new Export Control Act in relation to offence alleged to have been committed before commencement time**

*Alleged offence against old Export Control Act etc.*

- (1) The new Export Control Act applies in relation to goods or another thing in relation to which an offence against the old Export Control Act, old Export Control Regulations or an old Export Control Order is or was alleged to have been committed, as if a reference in section 414 of the new Export Control Act to “this Act” included a reference to the old Export Control Act, old Export Control Regulations or old Export Control Order.
- (2) The new Export Control Act applies in relation to a certificate given under section 414 of that Act, as applied by subitem (1) of this item, as if:
  - (a) a reference in section 415 of the new Export Control Act to “this Act” included a reference to the old Export Control Act, old Export Control Regulations or old Export Control Order; and
  - (b) in subsection 415(2) of the new Export Control Act, the words “At least 14 days before” were omitted and the word “Before” were substituted.

*Alleged offence against old Part 2 of the AMLI Act*

- (3) The new Export Control Act applies in relation to a substance in relation to which an offence against old Part 2 of the AMLI Act is or was alleged to have been committed, as if a reference in section 414 of the new Export Control Act to “this Act” included a reference to old Part 2 of the AMLI Act.
- (4) The new Export Control Act applies in relation to a certificate given under section 414 of that Act, as applied by subitem (3) of this item, as if:
  - (a) a reference in section 415 of the new Export Control Act to “this Act” included a reference to old Part 2 of the AMLI Act; and
  - (b) in subsection 415(2) of the new Export Control Act, the words “At least 14 days before” were omitted and the word “Before” were substituted.

**Division 6—Forfeiture of goods**

**87 Goods forfeited to the Commonwealth before commencement time**

- (1) This item applies in relation to goods if:
  - (a) before the commencement time, a court had ordered the forfeiture to the Commonwealth of the goods (including any coverings in which the goods were contained) under subsection 18(1) of the old Export Control Act or subsection 57(1) of old Part 2 of the AMLI Act; and
  - (b) the goods had not been sold or otherwise disposed of before the commencement time as permitted by subsection 18(3) of the old Export Control Act or subsection 57(3) of old Part 2 of the AMLI Act (as applicable).
- (2) The new Export Control Act applies in relation to the goods as if the court had ordered the forfeiture of the goods to the Commonwealth under subsection 416(1) of that Act.
- (3) For the purpose of the application of section 416 of the new Export Control Act in relation to the goods, the Secretary may, if necessary, take possession of the goods.

## **88 Forfeiture of goods in relation to which offence was committed before commencement time**

- (1) This item applies if, after the commencement time, a person is:
  - (a) convicted of an offence against the old Export Control Act, old Export Control Regulations, an old Export Control Order, old Part 2 of the AMLI Act, or this Act in relation to particular goods; or
  - (b) found to have contravened a civil penalty provision of this Act in relation to particular goods.
- (2) The new Export Control Act applies in relation to the goods as if, in subsection 416(1) of that Act:
  - (a) the expression “an offence against this Act” included a reference to an offence against the old Export Control Act, old Export Control Regulations, an old Export Control Order, old Part 2 of the AMLI Act, or this Act; and
  - (b) the expression “a civil penalty provision of this Act” included a reference to a civil penalty provision of this Act.

## **Division 7—Reports to Parliament about live-stock**

### **89 Reports to Parliament about exports of live-stock**

- (1) The Secretary must give the Minister a report containing the information set out in subsection 57AA(3) of old Part 2 of the AMLI Act that is provided to the Secretary during the period of 6 months ending on 30 June 2021 in relation to the carriage of live-stock on any voyage to a port outside Australia (whether or not the carriage occurred during that period).
- (2) The report must be given to the Minister before 1 August 2021.
- (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.

## **Division 8—Miscellaneous**

### **90 Compensation for acquisition of property**

- (1) If the operation of old Part 2 of the AMLI Act, or this Act or the new Export Control Act as it applies under 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) Subitem (1) applies whether the acquisition of property occurred before or occurs after the commencement time.
- (3) 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 of Australia; 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.

### **91 Protection from civil proceedings**

Section 430 of the new Export Control Act applies as if a reference in that section to “this Act” included a reference to the following:

- (a) this Act or an instrument made under this Act;
- (b) the old Export Control Act, or an instrument made under that Act, to the extent that it continues to apply because of this Act;
- (c) the new Export Control Act or an instrument made under that Act, or the Regulatory Powers Act, to the extent that it applies because of this Act.

## Part 12—Transitional rules

### 92 Transitional 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.
  - (2) The rules may also prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
    - (a) the amendments or repeals made by this Act; or
    - (b) the enactment of this Act or the *Export Control Act 2020*.
  - (3) Without limiting subitem (1) or (2), rules made under this item before 1 April 2023 may provide that provisions of this Act, the *Export Control Act 2020*, or any other Act or instrument have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.
  - (4) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to rules made under this item before 1 April 2023.
  - (5) 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 or the *Export Control Act 2020*.
  - (6) This Act (other than subitem (5)) does not limit the rules that may be made.
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*[Minister's second reading speech made in—  
House of Representatives on 4 December 2019  
Senate on 13 February 2020]*

(253/19)

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*No. 13, 2020*

*Export Control (Consequential Amendments and Transitional  
Provisions) Act 2020*

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