THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXPORT CONTROL BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Senator, the Hon. Bridget McKenzie)
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EXPORT CONTROL BILL 2019

GENERAL OUTLINE

The regulation of goods for export by the Australian Government is, in many circumstances, a prerequisite for the acceptance of those goods by importing countries. The Export Control Bill 2019 (the Bill) will create a legislative framework that will provide the primary means for the Australian Government to regulate goods exported from Australian territory. This framework will support access to international trading markets for Australian goods and protect Australia’s global trading reputation as a reliable source of safe and high-quality goods.

Australia’s existing legislative framework for agricultural production and certification of exports (including fish, forestry, fibre and food products) has developed over 35 years and currently comprises 17 Acts (including the Export Control Act 1982 and the Australian Meat and Live-stock Industry Act 1997) and more than 40 legislative instruments. This includes legislative instruments which regulate the export of fish, eggs, dairy, beef, lamb, goat, rabbit and pig meat, poultry meat, wild game meat, ratite (e.g. emu) meat, live animals (including livestock), and plants and plant products. The framework has served Australia well by enabling the export of agricultural products that meet importing country requirements, and will continue to do so until the Bill commences.

Many of the legislative instruments that support the existing export certification framework are due to sunset (cease to be law) on 1 April 2021 in accordance with the requirements of the Legislation Act 2003. This deadline provided the opportunity to review those legislative instruments as part of a broader review of the entire agricultural exports legislative framework, which took place in 2015 (the Review). The Review sought to verify whether farmers and exporters are being supported by contemporary, flexible and efficient legislation, and whether Australia’s trading partners continue to have confidence in Australia’s agricultural exports.

The Review found that, while the existing legislative framework serves Australian exporters well, there is scope for improvements to better support farmers and exporters to meet future importing country requirements and seize trade opportunities in a changing global environment. This included being more flexible to allow government and industry to respond to changes in technologies and future importing country requirements. The Review also found that if the framework is maintained in its current complex and duplicative state, it may lead to inefficient export procedures, increase transaction costs, and delay the clearance of agricultural goods for export in the longer term. All these potential effects may have an adverse impact on Australia’s export trade with other countries.

It is in Australia’s interest to ensure that appropriate regulation is in place. The administration of this legislative framework should also be the least burdensome for government, businesses, community organisations and individuals involved in the agricultural export system. Australia’s export legislation must support our agricultural industry but also provide assurance to our trading partners and deter the few that would seek to undermine our reputation as a reliable supplier of quality products.

The Bill, which is informed by the Review, is intended to replace the existing legislative framework for agricultural exports to provide more contemporary, flexible and efficient legislation that better regulates Australia’s agricultural exports into the future. The Bill will
set out the overarching principles for the operation of the improved export certification system and will incorporate and consolidate common principles from the existing legislative framework. This will remove a lot of the duplication in the current framework and enable the harmonisation of requirements (where appropriate) as well as enabling commodity-specific rules to be made.

It will be more flexible than the existing framework, enabling the Australian Government to be more responsive and better able to manage changes and issues as they arise. The Bill is also designed to draw upon, support and give effect to Australia’s rights and obligations under relevant international agreements, including trade-related agreements.

The objects of the Bill will include ensuring that goods that are exported meet the requirements of importing countries to enable and maintain market access for goods exported from Australia, that government and relevant industry standards are complied with, and that there is traceability of goods throughout the export supply chain, from production and processing to exporting, where required. The Bill will ensure the integrity of goods as well as the accuracy of trade descriptions and official marks that are applied to goods.

The Bill will absolutely prohibit the export of split vetch. It will also provide the Minister with the power to temporarily prohibit the export of certain goods, or the export of certain goods to a particular place, in circumstances where the Minister is satisfied that the prohibition is necessary to protect human, animal or plant life or health, or to secure compliance with an Australian law (other than the Bill).

Under the Bill, the export of ‘prescribed goods’ (being ‘goods’ that are set out in the delegated legislation (rules)) will be prohibited unless the requirements of the Bill or conditions specified in the rules are met. The Secretary will be able to grant exemptions from one or more provisions of the Bill in relation to prescribed goods in certain circumstances. ‘Non-prescribed goods’ (being all goods other than prescribed goods) will not be subject to the same requirements for exporting as prescribed goods.

The Bill will enable certificates to be issued for both prescribed and non-prescribed goods. Government certificates constitute evidence that goods that are to be, or have been, exported have been assessed as being compliant with the requirements of the Bill, and meet relevant importing country requirements.

The Bill and the rules will set out the requirements for the export of goods from Australian territory. The rules will be able to prescribe conditions that must be complied with depending on the goods being exported. For example, the rules may require that:

- export operations for a kind of prescribed goods are carried out at an accredited property or registered establishment or in accordance with an approved arrangement;
- a person must hold an export licence;
- an export permit has been issued;
- a notice of intention to export has been given; or
- a trade description or official mark has been applied to the goods.

In order to give effect to Australia’s rights and obligations under relevant international trade-related agreements, the rules will be able to provide for a system of tariff rate quotas to be administered for the export of certain goods.
The Bill will also make provision for the authorisation of persons to exercise certain powers and perform certain functions under the Bill. These powers will include conducting audits of export operations, carrying out assessments of goods, and giving directions that must be complied with by exporters and producers in the course of carrying out export operations relating to prescribed goods.

In order to deter people from engaging in conduct that contravenes the conditions and requirements of the Bill, and to ensure the Bill’s swift and effective enforcement, the Bill will provide for a range of powers that can be exercised by the Secretary or authorised officers, including those triggered by the *Regulatory Powers (Standard Provisions) Act 2014*. These powers will include action such as revocation and suspension of regulatory tools (for example, registration of establishments or export licences), as well as injunctions, enforceable undertakings and infringement notices. For more serious compliance issues, the Bill will provide for a number of civil penalty provisions as well as criminal offences.

The Bill will also provide for the Secretary to make a number of decisions, some of which may affect the interests of individuals. The Bill provides for merits review to be available in relation to decisions by the Secretary that affect individuals. Decisions will also be able to be reviewed externally by the Administrative Appeals Tribunal.

The use and disclosure of ‘protected information’ will be regulated under the Bill. Protected information will be able to be obtained under, or in accordance with, the Bill, and may then be used or disclosed in certain circumstances, in accordance with the *Privacy Act 1988*. A person may commit an offence if the person uses or discloses protected information other than in accordance with the Bill.

Fees will be able to be imposed under the Bill, on a cost-recovery basis, in relation to activities carried out by, or on behalf of, the Commonwealth (for example, by authorised officers) in the performance of functions or the exercise of powers under the Bill.

Finally, the Bill will delegate the power to make rules to the Secretary. The rules will be legislative instruments and will be subject to the requirements of the *Legislation Act 2003*, including parliamentary scrutiny, oversight, disallowance and sunsetting. The Bill will also include a power for the Minister to issue directions to the Secretary about the Secretary’s rule-making power. Directions made by the Minister to the Secretary will be legislative instruments but will not be subject to disallowance or sunsetting. This will ensure that the Minister has appropriate oversight of the regulatory framework.

**FINANCIAL IMPACT STATEMENT**

The Bill will have no financial impact on the Australian Government Budget.

**REGULATION IMPACT STATEMENT**

The Regulation Impact Statement is attached to this explanatory memorandum.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

The full statement of compatibility with human rights is attached to this explanatory memorandum.
<table>
<thead>
<tr>
<th>Term, acronym or abbreviation</th>
<th>Meaning</th>
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<tr>
<td>Administrative Appeals Tribunal Act</td>
<td>Administrative Appeals Tribunal Act 1975.</td>
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<td>the Bill</td>
<td>the Export Control Bill 2019.</td>
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<td>Crimes Act</td>
<td>Crimes Act 1914.</td>
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<td>the Department</td>
<td>the Department administered by the Minister who will administer the ‘Export Control Act 2019’, which is an Act that will be created by this Bill if the Bill passes the Parliament and receives the Royal Assent.</td>
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<td>the Minister</td>
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<td>the rules</td>
<td>the Export Control Rules made under clause 432 of the Bill.</td>
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the Secretary of the Department administered by the Minister who will administer the ‘Export Control Act 2019’, which is an Act that will be created by this Bill if the Bill passes the Parliament and receives the Royal Assent.

trading partner
a foreign country to whom Australia exports goods.
NOTES ON CLAUSES

The information set out below provides information, in addition to that included in the relevant notes on clauses, about the power to make rules under clause 432 of the Bill and the offence and civil penalty provisions included in the Bill. This information has been provided to assist the reader and should be read in conjunction with the detailed notes on the clauses that refer to these matters.

Rules made under the Bill

The Bill will set out the overarching legislative framework for the Government to regulate the export of goods from Australian territory. The Bill will enable the Secretary to make rules by legislative instrument that set out the detailed requirements for the export of goods. These rules will be made under clause 432 of the Bill. This clause will allow the Secretary to prescribe matters that are:

- required or permitted by the Bill to be prescribed by the rules; or
- necessary or convenient to be prescribed by the rules in order to carry out or give effect to the Bill.

There are a number of provisions in the Bill that require or permit the Secretary to make rules. These provisions set the parameters of the Secretary’s rule-making power and either:

- provide examples of the kinds of things for which the Secretary may make provision in the rules; or
- set out the default matters for the provision and allow the Secretary to give further detail in the rules.

Power of the Secretary to make rules

The Bill will give the Secretary the power to make rules.

The rules will set out the detailed requirements and establish conditions relating to the export of goods from Australian territory. The matters that will be set out in the rules will ensure that exported goods will meet importing country requirements and requirements of the Bill. For example, the rules may include requirements that ensure goods meet Australia’s and importing countries’ food safety standards, or that minimise plant or animal health risks and biosecurity risks of goods.

Importing country requirements change regularly. Many of these changes are technical matters, concerning the way that goods are to be produced, prepared or exported. Making these changes quickly will be crucial to ensuring that Australian producers, processors and exporters do not experience disruption in market access and can continue to export goods that meet importing country requirements. This is particularly important because one non-compliant export of goods can have significant consequences for other exports, including restrictions on, or the closure of, market access.

The requirements for producing and preparing goods for export, and for exporting goods, vary substantially between commodities. For example, the requirements to ensure that red meat for export is safe for human consumption are substantially different to the requirements to ensure that wood chips do not contain any pests or diseases. The requirements also vary depending on the purpose for which the Government regulates a commodity. For some commodities,
these requirements ensure that the goods meet those of the importing country. For others, the requirements may relate to Australia’s standards for goods that are exported or to give effect to Australia’s rights and obligation under any international agreement to which Australia is a party.

It is appropriate that the Secretary is given the power to set the requirements for the export of goods in the rules. The combination of their technical nature, the need to rapidly respond to changes in importing country requirements, and the need to deal with a wide range of commodities mean that the Secretary is in the best position to set the requirements for the export of goods from Australia.

**Oversight mechanisms**

The Bill also envisages oversight mechanisms for the Secretary’s power to make rules. These mechanisms ensure that the Secretary remains accountable to both Parliament and the Minister in determining the requirements for exporting goods.

First, the rules will be legislative instruments. In accordance with the Legislation Act, the rules and any changes to them made by the Secretary will need to be tabled in each House of Parliament within six sitting days of registration to be scrutinised. The rules will then be subject to disallowance by either house for fifteen sitting days.

Second, clause 289 empowers the Minister to give, by legislative instrument, directions to the Secretary in relation to the exercise of the Secretary’s rule-making power. For example, the Minister may give a direction that the Secretary must take certain matters into account when making a rule in relation to prescribed goods. The Minister may also give a direction requiring the Secretary to make or amend the rules in a particular way. The Secretary must comply with directions given by the Minister. This gives the Minister an additional level of oversight and control over the Secretary’s rule-making power, and ensures that the Secretary is appropriately accountable to the Minister. A direction by the Minister to the Secretary is a legislative instrument, but is not subject to tabling or disallowance.

Finally, the Secretary will need to comply with the ordinary processes of government in making rules. This will include obtaining appropriate authority from government for policy changes, preparing a regulation impact statement where required, and conducting appropriate and reasonable consultation with industry and other stakeholders.

**Compliance and enforcement**

The Bill will include a modernised compliance and enforcement framework. It will include a range of mechanisms that are aimed at detecting, deterring and punishing non-compliance. These include powers to monitor and investigate suspected non-compliance and a range of sanctions to deal with non-compliance.

**Monitoring and investigation powers**

The Bill will trigger the Regulatory Powers Act. This will give authorised officers access to the monitoring and investigatory powers available under that Act. These include powers to enter premises (by consent or warrant) and exercise monitoring or investigation powers. These powers will ensure that authorised officers are able to effectively monitor compliance and investigate wrongdoing in relation to a provision of the Bill in a way that is consistent with other Commonwealth regulatory agencies.
The Bill will provide for some modifications to the application of the Regulatory Powers Act. The modifications include the ability for authorised officers to secure goods in exercising their monitoring powers for the purposes of sampling, testing or analysing those goods (clause 327).

The Bill will also give additional powers to authorised officers, including to:

- enter accredited properties or registered establishments in the absence of consent or a warrant to monitor compliance with the Bill (clause 346); and
- stop and search conveyances in emergency situations (clause 354).

These modifications and additional powers are appropriately adapted to enable authorised officers to enforce the regulatory scheme set up by the Bill and ensure that it achieves its objects. The modifications and additional powers ensure that authorised officers are able to exercise powers to ensure that goods that are exported from Australia meet the requirements of the Bill and importing countries, and that the actions of one exporter do not jeopardise market access for all.

Sanctions for non-compliance

The Bill will provide for a graduated set of sanctions to respond to non-compliance. The range of compliance and enforcement powers in the Bill is intended to allow the Government to choose between different enforcement options and ensure that sanctions are appropriate and proportionate to the non-compliance.

The Government will continue to use administrative sanctions as the primary mechanism of responding to non-compliance. These sanctions may include increasing the frequency and scope of audits; refusing to grant, or revoking, permits or certificates; or varying, suspending, revoking or placing additional conditions on an accredited property, registered establishment, approved arrangement or export licence. As these sanctions directly affect the livelihood of people who prepare, produce or export goods, in most cases, they will be the most effective way to address non-compliance and deter similar conduct in the future.

The Bill will also allow for a range of regulatory sanctions for non-compliance. These include criminal penalties, civil penalties, infringement notices, injunctions and enforceable undertakings. Further information about the role of criminal offences and civil penalties in the Bill is set out below.

Criminal offences

The Bill will include a range of criminal offences. The Government has carefully considered the need for these offences and has included them in the Bill only where necessary to deter and punish non-compliance.

Australia’s ongoing access to overseas markets depends upon exported goods meeting importing country requirements and Australian standards, such as having accurate trade descriptions. Contraventions of the offence provisions in the Bill at any point in the export supply chain may result in the export of non-compliant goods. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods. The offences provide an effective
deterrent to, and punishment for, conduct that may undermine Australian trade or risk the livelihoods of people who produce, prepare and export goods. In this sense, the offences in the Bill are crucial to upholding Australia’s strong trading reputation and maintaining market access for all.

The consequences of exporting non-compliant goods are not limited to economic or trading matters. The Bill and rules may prescribe requirements to minimise risks to plant or animal health, human health and biosecurity risks of goods exported from Australia. Contraventions of these requirements may have significant ramifications for biosecurity—both in Australia and abroad—and create risks to animal, plant and human health.

The penalty for each offence provision takes into account the gravity of the offence and the serious consequences that may flow from non-compliance. Penalties have been set to deter non-compliance and provide proportionate and appropriate punishment for deliberate or reckless wrongdoing.

The *Criminal Code* applies in relation to the Bill. Notes are included under some provisions of the Bill to direct the reader to particularly relevant sections of the *Criminal Code*. These include where:

- a person may commit an offence if the person makes a false or misleading statement in an application or provides false or misleading information or documents under sections 136.1, 137.1 and 137.2 of the *Criminal Code*; and
- where a defendant will bear the evidential burden in relation to a matter under the Bill, in accordance with subsection 13.3(3) of the *Criminal Code*.

Other relevant parts of the *Criminal Code* will apply to the Bill. This includes sections 9.3 and 9.4, which clarify that a person can be criminally responsible even if the person is ignorant of or mistaken about the existence of the relevant provisions in the Bill or the rules. Ignorance of the law is not to be a reason for escaping criminal liability.

The Bill contains a small number of strict liability offences. Where strict liability applies to an offence, the prosecution is only required to prove the physical elements of an offence in order for the defendant to be found guilty, in accordance with section 6.1 of the *Criminal Code*. Strict liability offences have been used where there is a strong public interest in ensuring that the regulatory scheme is observed and it can be reasonably expected that the person was aware of their duties and obligations.

Strict liability also attaches to elements of a number of offences. In clauses 30 to 50, 252 and 253, these elements are matters of law. It is appropriate for these elements to be strict liability because persons engaged in export operations in relation to goods should know their legal obligations, and ignorance of the law should not be a ground on which a person may escape liability.

**Civil penalties**

The Bill also includes a range of civil penalties. It will trigger the framework for civil penalties in Part 4 of the Regulatory Powers Act. The civil penalties in the Bill have been designed to encourage compliance with the Bill without resorting to criminal prosecution. Contraventions of civil penalty provisions will need to be proved in court on the balance of probabilities.
The civil penalty provisions in the Bill will deter non-compliance with the requirements in the Bill for exporting goods. As noted above, non-compliance with these requirements could have significant and lasting negative consequences for Australia’s economy and trading relationships, as well as people who produce, prepare and export goods. The Bill includes civil penalties for provisions which are regulatory in nature, and where a pecuniary penalty is the appropriate remedy for non-compliance.

Civil penalty provisions offer an alternative to criminal prosecution. The penalties have been set at a level substantially higher than the maximum fines available for criminal offences in the Bill. Given the regulatory nature of the Bill, it is important that civil penalties are set at a level that means that the penalty is not merely perceived as a cost of doing business. This is particularly the case for bodies corporate. Under subsection 82(5) of the Regulatory Powers Act, where a body corporate contravenes a civil penalty provision, the maximum civil penalty that a relevant court could order that person to pay the Commonwealth is five times the penalty specified in the provision, unless the provision specifies otherwise. Clause 50A of the Bill will provide a method for calculating the civil penalty amount for specified clauses involving certain contraventions by bodies corporate and will modify the operation of subsection 82(5) of the Regulatory Powers Act in relation to those clauses.

Some provisions will have both criminal and civil penalties attached. This is intended to allow the Government to choose the most appropriate sanction in the circumstances. The civil penalty framework in the Bill is intended to operate in parallel to, but distinct from, the framework of criminal offences. In particular, while some civil penalties and criminal offences may share physical elements, it is not intended that the criminal fault elements under the Criminal Code apply to civil penalty proceedings.

Chapter 1—Preliminary

PART 1—PRELIMINARY

Clause 1 Short Title

Clause 1 will provide that the short title of the Bill is the Export Control Act 2019.

Clause 2 Commencement

Subclause 2(1) will provide that each provision of the Bill specified in column 1 of the table that is set out in subclause 2(1), will commence, or will be taken to have commenced, in accordance with column 2 of that table. Any other statement in column 2 will have effect according to its terms.

Item 1 of the table in subclause 2(1) will provide that clauses 1 and 2 of the Bill (and anything else in the Bill not specified in the commencement table in subclause 2(1) of the Bill) commences on the day that the Bill receives the Royal Assent.

Item 2 of the table in subclause 2(1) will provide that clauses 3 to 432 of the Bill will commence at a single time in the Australian Capital Territory to be fixed by Proclamation.

However, if clauses 3 to 432 of the Bill do not commence before 3 am (by legal time in the Australian Capital Territory) on 28 March 2021, they will commence at that time. This will
mean that if clauses 3 to 432 of the Bill have not been proclaimed to commence before 3 am on 28 March 2021, they will commence at 3 am on 28 March 2021. A note will be included at the end of the table in subclause 2(1), which will provide that the commencement table in subclause 2(1) relates only to the provisions in the Bill as originally enacted and will not be amended to deal with any later amendments of the Bill.

The default commencement period for an Act is usually six months after the Royal Assent. However, the Bill will provide the option of a longer commencement period. This timeframe will coincide with the sunsetting of many of the legislative instruments that make up the existing regulatory framework for the export of goods. This timing will also enable continued consultation with trading partners. This is necessary to build their confidence in the regulatory scheme the Bill will establish and will reduce the risk of disruption to trade.

Subclause 2(2) will provide that any information in column 3 of the table that is set out in subclause 2(1) of the Bill will not be part of the Bill. Information will be able to be inserted in this column, or information in it will be able to be edited, in any published version of the Bill.

Clause 3  Objects of this Act
Clause 3 will set out the objects of the Bill. The objects of the Bill will be:

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

Clause 4  Simplified outline of this Act
Clause 4 will create a simplified outline of the Bill. It will provide that the Bill creates a framework for regulating the export of goods, including agricultural products and food, from Australian territory. The Bill will include provisions about its application and the relationship of the Bill with State and Territory laws.

The Bill will provide that certain goods will be prohibited absolutely from being exported from Australian territory. In addition, the Bill will provide that the Minister may, by legislative instrument (a temporary prohibition determination), determine that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, is prohibited absolutely for a specified period of up to six months; or that the export of a specified kind of goods (including prescribed goods) from Australian territory, or from a part of Australian territory, to a specified place is prohibited for a specified period of up to six months.

The Bill will also provide that the Minister may only make a temporary prohibition determination if the Minister is satisfied that the determination is necessary to protect human, animal or plant life or health; or to secure compliance with an Australian law (other than the Bill).
The Bill will provide that the rules may prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, unless prescribed conditions are complied with. Conditions may be prescribed for the purpose of ensuring importing country requirements are met, or government or industry standards or requirements are complied with, or to give effect to Australia’s international obligations. The Secretary will be able to grant an exemption from one or more provisions of the Bill in relation to prescribed goods that will be exported in certain circumstances. The Bill will also provide that a government certificate may be issued in relation to prescribed goods and non-prescribed goods that are to be, or that have been, exported.

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

The Bill will enable authorised officers (including third party authorised officers) and other persons to exercise certain powers under the Bill.

The Bill will provide for a range of compliance and enforcement powers, including by applying the Regulatory Powers Act. Certain decisions under the Bill will be able to be reviewed internally and by the Administrative Appeals Tribunal. The Bill will regulate the use and disclosure of protected information and will provide that fees will be able to be charged, on a cost-recovery basis, in relation to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under the Bill.

Finally, the Bill will enable the Secretary to make rules for the purposes of the Bill. The rules will be disallowable legislative instruments.

The simplified outline is included to assist the reader to understand the regulatory scheme in relation to the export of goods that will be established by the Bill. It is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill.

**Clause 5  Act binds the Crown**

Clause 5 will provide that the Bill will bind the Crown in each of its capacities, but will not make the Crown liable to be prosecuted for an offence, be subject to a civil proceeding for a civil penalty order under Part 4 of the Regulatory Powers Act, or be given an infringement notice under Part 5 of the Regulatory Powers Act.

This will mean that the Commonwealth and State and Territory governments will be bound to comply with the provisions of the Bill, but they cannot be prosecuted for an offence, be subject to a civil penalty, or be given an infringement notice under the Bill.

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

Clause 6 will give effect to international law principles about the application of legislation in the territory of a state and in a coastal state’s maritime zones. Subclause 6(5) will provide that clause 6 is subject to clause 10 of the Bill, which will set out the right of innocent passage at international law.
General

Subclause 6(1) will provide that, subject to subclauses 6(2), 6(3) and 6(4), the Bill applies in Australia, in the exclusive economic zone adjacent to Australia, and on or in the continental shelf adjacent to Australia in relation to:

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

A note will be included at the end of subclause 6(1) to direct the reader to section 15B of the Acts Interpretation Act, which will clarify that a reference to Australia includes a reference to the coastal sea of Australia.

The effect of subclause 6(1) will be that the Bill applies in Australia (including the coastal sea of Australia) in relation to:

- all Australian persons or bodies, Australian aircraft and Australian vessels; and
- all foreign persons or bodies, foreign aircraft and foreign vessels.

Subclause 6(1) will provide that, in accordance with international law, all persons or bodies, aircraft and vessels (including foreigners) are subject to the regulatory controls set out in the Bill when they are in Australia (including its coastal sea). It will also enable the appropriate authorities to take enforcement action against those persons, if necessary.

Limited application in the exclusive economic zone

The combined effect of subclauses 6(1) and 6(2) will be that the Bill applies in the exclusive economic zone adjacent to Australia in relation to:

- all Australian persons or bodies, Australian aircraft and Australian vessels; and
- all foreign persons or bodies, foreign aircraft and foreign vessels, but only in relation to the export of goods that have been taken in that area.

This will mean that the regulatory controls set out in the Bill will apply in the exclusive economic zone adjacent to Australia in relation to Australian persons or bodies, Australian aircraft and Australian vessels. In relation to foreign persons or bodies, foreign aircraft and foreign vessels, the jurisdiction in the exclusive economic zone will be limited. The regulatory controls that will be set out in the Bill will only apply to foreign persons or bodies, foreign aircraft and foreign vessels in relation to the export of goods that have been taken in that area. For example, the Bill will apply to a foreign vessel in the exclusive economic zone adjacent to Australia that was carrying fish to be exported, if the fish was taken from the exclusive economic zone adjacent to Australia. However, the Bill cannot, for example, regulate a foreign vessel carrying goods exported from Australia that is just passing through the exclusive economic zone.

Subclause 6(3) will provide that subclause 6(2) will not prevent the exercise of powers under the Bill in the contiguous zone of Australia in relation to a foreign person or body, foreign aircraft or foreign vessel, to investigate a contravention of the Bill that occurred in Australia or to prevent a contravention of the Bill from occurring in Australia.

Subclause 6(3) will provide that, consistent with international law, the limitation on the exercise of jurisdiction in the exclusive economic zone in relation to foreign persons or
bodies, foreign aircraft and foreign vessels (see subclause 6(2)) will not prevent Australia from taking enforcement action in the contiguous zone (which is a part of the exclusive economic zone). The powers that will be able to be exercised pursuant to subclause 6(3) of the Bill will include the power to investigate a contravention of the Bill that occurred in Australia (for example, before the vessel left Australia) and to prevent a contravention of the Bill from occurring in Australia.

**Limited application on or in the continental shelf**

The combined effect of subclauses 6(1) and 6(4) will be that the Bill will apply on or in the continental shelf adjacent to Australia (excluding the area covered by the exclusive economic zone) in relation to:

- all Australian persons or bodies, Australian aircraft and Australian vessels; and
- all foreign persons or bodies, foreign aircrafts or foreign vessels, but only in relation to the export of natural resources that have been harvested on the continental shelf in that area.

This will mean that the regulatory controls that will be set out in the Bill will apply on or in the continental shelf adjacent to Australia in relation to all Australian persons or bodies, Australian aircraft and Australian vessels. In relation to foreign persons and bodies, foreign aircraft and foreign vessels, the jurisdiction on or in the continental shelf will be limited. The regulatory controls that will be set out in the Bill will only apply to foreign persons or bodies, foreign aircraft and foreign vessels in relation to the export of natural resources (for example, sea cucumbers) that have been harvested on the continental shelf in that area. For example, the Bill will apply to a foreign vessel in the waters above the continental shelf adjacent to Australia that was carrying sea cucumbers to be exported, if the sea cucumbers were taken from the continental shelf adjacent to Australia. However, the Bill will not be able to, for example, apply its regulatory controls to a foreign vessel that is fishing in the waters above the continental shelf adjacent to Australia.

A note will be included at the end of subclause 6(4) that will direct the reader to the definition of *natural resources* in clause 12 of the Bill.

**Clause 7 Limited application of the Act outside Australia**

Clause 7 will address the application of the Bill in an area that is outside the outer limits of the exclusive economic zone adjacent to Australia and is not on or in the continental shelf adjacent to Australia; but excludes an external Territory, the exclusive economic zone adjacent to an external Territory and on or in the continental shelf adjacent to an external Territory (see subclause 7(2) of the Bill).

Subclause 7(1) will provide that, in an area covered by subclause 7(2), the regulatory controls set out in the Bill apply to Australian nationals, Australian residents, the Commonwealth, Commonwealth bodies, Australian aircraft and Australian vessels, and members of crews of Australian aircraft and vessels.

This will mean that the regulatory controls that are set out in the Bill will apply outside Australia in an area covered by subclause 7(2), but only in relation to the persons listed in subclause 7(1).
Clause 8  Extension of this Act to external Territories and other areas

The effect of subclauses 8(1) and 8(2) will be that the Bill will not automatically apply to the external Territories, but the rules may extend the Bill or a provision of the Bill to:

- an external Territory prescribed by the rules;
- the whole or a part of the exclusive economic zone adjacent to an external Territory;
- the whole or a part of the area that is on or in the continental shelf adjacent to an external Territory and is not within the exclusive economic zone adjacent to that Territory; or
- an area outside the Australian fishing zone in relation to which the *Fisheries Management Act 1991* applies under regulations made for the purposes of section 8 of that Act.

Subclause 8(3) will provide that the rules may extend the Bill or a provision of the Bill to an area adjacent to an external Territory under paragraph 8(2)(b), even if the Bill has not been extended to the external Territory itself. Enabling the rules to extend the operation of the Bill to an external Territory, such as Christmas Island or Cocos (Keeling) Island, the whole or a part of the exclusive economic zone of an external Territory, or the continental shelf of such a Territory that is outside the exclusive economic zone will give the Secretary the flexibility to regulate the export of goods from those areas but only when it is necessary and appropriate to do so.

This will mean, for example, that the Bill or a provision of the Bill will be able to be extended to the exclusive economic zone adjacent to Heard Island and McDonald Islands, without the Bill applying to the Territory itself. If the certification provisions in the Bill are extended to these areas, it would allow the fish caught in this area to be certified as product of Australia or product of the Australian Territory of Heard Island and McDonald Islands.

Two notes will be included at the end of clause 8. Note 1 will direct the reader to the definition of *this Act* in clause 12 of the Bill, and will provide that the reference to this Act in clause 8 includes a reference to legislative instruments made under the Bill. This will mean that the reference to this Act in clause 8 will include the rules made under clause 432 of the Bill, as the rules will be legislative instruments. Note 2 will direct the reader to subsection 15B(3) of the Acts Interpretation Act, and will provide that a provision of the Bill that extends to an external Territory will be taken to have effect in, and in relation to, the coastal sea of the Territory as if that coastal sea was part of the Territory.

Clause 9  Application of this Act in external Territories and other areas

Clause 9 will apply the principles of international law to the external Territories, but only if the Bill has been extended to an external Territory or an area adjacent to an external Territory under clause 8 of the Bill. Subclause 9(6) will provide that clause 9 will be subject to clause 10 of the Bill, which will set out the right of innocent passage at international law.

General

Subclause 9(1) will provide that, subject to subclauses 9(2), 9(3), 9(4) and 9(5), if a provision in the Bill is extended to an external Territory under subclause 8(2) of the Bill, the provision will apply in the external Territory or the adjacent area in relation to:

- all persons or bodies (including foreign persons or bodies); and
• all aircraft (including foreign aircraft); and
• all vessels (including foreign vessels).

The effect of subclause 9(1) will be that, if a provision in the Bill is extended to an external Territory under clause 8(2) of the Bill, the provision will apply to the external Territory (including the coastal sea of the external Territory) in relation to:

• all Australian persons or bodies, Australian aircraft and Australian vessels; and
• all foreign persons or bodies, foreign aircraft and foreign vessels.

The effect of subclause 9(1) will be that all persons or bodies, aircraft and vessels (including foreigners) are subject to the regulatory controls set out in the Bill when they are in an external Territory (including its coastal sea). It will also enable the appropriate authorities to take enforcement action against those persons, if necessary.

Limited application in the contiguous zone

Subclause 9(2) will provide that, if a provision of the Bill is extended to an external Territory under paragraph 8(2)(a) of the Bill, nothing in the Bill will prevent the exercise of powers under the Bill in the contiguous zone adjacent to the external Territory (or in the contiguous zone adjacent to Australia) in relation to a foreign person or body, foreign aircraft or foreign vessel, to investigate a contravention of the Bill that occurred in the external Territory or to prevent a contravention of the Bill from occurring in the external Territory.

Subclause 9(2) will provide that, consistent with international law, the exercise of jurisdiction in the exclusive economic zone in relation to foreign persons or bodies, foreign aircraft and foreign vessels (see subclause 8(2) of the Bill) does not prevent Australia from taking enforcement action in the contiguous zone (which is a part of the exclusive economic zone) adjacent to an external Territory or Australia. The powers that may be exercised pursuant to subclause 9(2) include the power to investigate a contravention of the Bill that occurred in the external Territory (for example, before the vessel left the external Territory) and to prevent a contravention of the Bill from occurring in the external Territory.

Limited application in the exclusive economic zone

The combined effect of subclauses 9(1) and 9(3) will be that, if a provision of the Bill is extended to the exclusive economic zone adjacent to an external Territory under subparagraph 8(2)(b)(i) of the Bill, the provision will apply in that area in relation to:

• all Australian persons or bodies, Australian aircraft and Australian vessels; and
• all foreign persons or bodies, foreign aircraft and foreign vessels, but only in relation to the export of goods that have been taken in that area.

This will mean that the regulatory controls set out in the Bill will apply in the exclusive economic zone adjacent to an external Territory in relation to Australian persons or bodies, Australian aircraft and Australian vessels. In relation to foreign persons or bodies, foreign aircraft and foreign vessels, the jurisdiction in the exclusive economic zone will be limited. The regulatory controls set out in the Bill will only apply to foreign persons or bodies, foreign aircraft and foreign vessels in relation to the export of goods that have been taken in that area. For example, if the Bill is extended to the exclusive economic zone of an external Territory, the Bill will apply to a foreign vessel in the exclusive economic zone adjacent to the external Territory that was carrying fish to be exported, if the fish were taken from the exclusive
economic zone adjacent to the external Territory. However, the Bill cannot, for example, regulate a foreign vessel that is carrying goods exported from Australia which is just passing through the exclusive economic zone of that external Territory.

Subclause 9(4) will provide that subclause 9(3) does not prevent the exercise of powers under the Bill in the contiguous zone adjacent to an external Territory (or in the contiguous zone adjacent to Australia) in relation to a foreign person or body, foreign aircraft or foreign vessel, to investigate a contravention of the Bill that occurred in an external Territory or to prevent a contravention of the Bill from occurring in an external Territory.

Subclause 9(4) will provide that, consistent with international law, the limitation on the exercise of jurisdiction in the exclusive economic zone in relation to foreign persons or bodies, foreign aircraft and foreign vessels (see subclause 9(3)) does not prevent Australia from taking enforcement action in the contiguous zone (which is a part of the exclusive economic zone) adjacent to an external Territory or Australia. The powers that may be exercised pursuant to subclause 9(4) include the power to investigate a contravention of the Bill that occurred in the external Territory (for example, before the vessel left the external Territory) and to prevent a contravention of the Bill from occurring in the external Territory (see subclause 9(2)).

**Limited application on or in the continental shelf**

The combined effect of subclauses 9(1) and 9(5) will be that, if a provision in the Bill is extended to the continental shelf adjacent to an external Territory under subparagraph 8(2)(b)(ii) of the Bill, the provision will apply in that area in relation to:

- all Australian persons or bodies, Australian aircraft and Australian vessels; and
- all foreign persons or bodies, foreign aircrafts or foreign vessels, but only in relation to the export of natural resources that have been harvested on the continental shelf in that area.

This will mean that the regulatory controls that are set out in the Bill will apply on or in the continental shelf adjacent to an external Territory in relation to all Australian persons or bodies, Australian aircraft and Australian vessels. In relation to foreign persons and bodies, foreign aircraft and foreign vessels, the jurisdiction on or in the continental shelf will be limited. The regulatory controls set out in the Bill will only apply to foreign persons or bodies, foreign aircraft and foreign vessels in relation to the export of natural resources (for example, sea cucumbers) that have been harvested on the continental shelf in that area. For example, if the Bill is extended to the continental shelf of an external Territory, the Bill will apply to a foreign vessel in the waters above the continental shelf adjacent to the external Territory that was carrying sea cucumbers to be exported, if the sea cucumbers were taken from the continental shelf adjacent to the external Territory. However, the Bill cannot, for example, apply its export regulatory controls to a foreign vessel that is fishing in the waters above the continental shelf adjacent to the external Territory.

A note will be included at the end of subclause 9(5) to direct the reader to the definition of natural resources in clause 12 of the Bill.
Clause 10  Rights of foreign aircraft and vessels under Convention on the Law of the Sea not affected

Clause 10 will provide that the Bill does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign aircraft or foreign vessels, in accordance with the United Nations Convention on the Law of the Sea, above or in:

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

Clause 10 will, in accordance with international law, preserve the rights of foreign aircraft or foreign vessels to exercise the right of innocent passage above or in the territorial sea, exclusive economic zone and waters above the continental shelf of Australia (including the external Territories). Passage will be innocent so long as it does not adversely affect the peace, good order or security of Australia. An aircraft or vessel in innocent passage may travel in and through the areas listed in the dot points above, provided that it travels without stopping or anchoring except in any circumstances beyond the aircraft’s or vessel’s control.

Clause 11  Concurrent operation of State and Territory laws

Subclause 11(1) will provide that the Bill does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with the Bill.

This will be subject to two exceptions. Section 109 of the Constitution invalidates a State law to the extent that it is inconsistent with a Commonwealth law. Determining whether a State law is inconsistent with a Commonwealth law involves interpreting both laws. If the Commonwealth law is interpreted as operating to the exclusion of the State law, the State law will be inconsistent with the Commonwealth law and invalid. Clause 11 will also apply to Territory laws in the same way as it will apply to State laws. While section 109 of the Constitution does not apply to Territory laws, similar principles apply in relation to the inconsistency of Territory laws with Commonwealth laws.

A concurrent operation provision, such as clause 11, will be used in interpreting the Commonwealth law to determine whether it operates to the exclusion of State or Territory law. It will indicate the Parliament’s intention that the Commonwealth law should not operate to the exclusion of State or Territory law to the extent that the laws are capable of operating concurrently. That is, it will not be intended to cover the subject matter exclusively or exhaustively. In some cases, the laws may not be able to operate concurrently in specific instances despite the general intention that the laws should do so.

Subclause 11(2), will clarify that, without limiting subclause 11(1), the Bill does not exclude or limit the concurrent operation of State or Territory laws that impose offences or civil penalties, where the same or similar conduct is also an offence or subject to a civil penalty under the Bill. Under subclause 11(3), subclause 11(2) will apply even if the penalty, fault elements, defences or exceptions that apply to the offence or civil penalty provisions under the State law differ to those that will be set out in the Bill.
PART 2—INTERPRETATION

Division 1—Definitions

Clause 12 Definitions

Clause 12 will provide definitions for key terms that are used throughout the Bill. These definitions are set out below.

**accredited property**

This definition will provide that an ‘accredited property’ means a property that is accredited under Chapter 3 of the Bill.

An accredited property will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods completely or to a specified place, unless export operations are carried out in an accredited property, and certain conditions in relation to an accredited property are met.

In circumstances where an accredited property, or condition relating to an accredited property, is a prescribed export condition for a kind of prescribed goods, the offences and civil penalty provisions set out in clauses 38 to 49 of the Bill may apply.

The term accredited property will primarily be used in Chapter 3 of the Bill, which will set out a number of matters in relation to accredited properties. An accredited property will generally relate to the production of prescribed goods for export, and will usually be at the beginning of the supply chain, for example, where animals are raised or crops are grown.

Also see the definition of property.

**accredited veterinarian**

This definition will provide that an ‘accredited veterinarian’ means a veterinarian who is accredited in accordance with rules made under clause 432 of the Bill for the purposes of subclause 312(1) of the Bill.

The term will primarily be used in Division 2 of Part 5 of Chapter 9 of the Bill, which will set out a number of matters relating to accredited veterinarians and approved export programs. Accredited veterinarians may carry out activities that are set out in an approved export program for the purpose of ensuring:

- the health and welfare of eligible live animals; or
- the health and condition of eligible animal reproductive material throughout the export process.

**adjacent premises warrant**

This definition will provide that an ‘adjacent premises warrant’ means a warrant issued under clause 335 of the Bill. The term will primarily be used in Part 4 of Chapter 10 of the Bill in relation to entry to adjacent premises for monitoring and investigation purposes.
**aircraft**

This definition will provide that ‘aircraft’ means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth’s surface.

The term will primarily be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill. It will also be relevant to clause 253 of the Bill, which will create a civil penalty and make it an offence to put prescribed goods on an aircraft in circumstances where a false trade description has been applied to the prescribed goods.

**animal**

This definition will provide that ‘animal’ includes a dead animal and any part of an animal, but does not include a human or a part of a human, whether the human is dead or alive.

The term will be used in the definition of goods, which will relevantly provide that goods mean an animal, or an article, substance or thing (including reproductive material) derived from an animal whether or not in combination with any other article, substance or thing. The term will also be used in the definitions of animal reproductive material, eligible live animals, eligible animal reproductive material, goods and prepare.

**animal reproductive material**

This definition will provide that ‘animal reproductive material’ means any part of an animal from which another animal can be produced; and includes an embryo, an egg or ovum, and semen.

Also see the definition of animal.

**applied**

This definition will provide that ‘applied’, in relation to a trade description, has the meaning given by clause 247 of the Bill.

Clause 247 of the Bill will set out the circumstances in which a trade description is applied to goods. This includes, for example, when a trade description is applied directly to the goods, their packaging or anything containing the goods.

Also see the definition of trade description.

**appropriate person**

This definition will provide that an ‘appropriate person’, for premises to which an adjacent premises warrant relates, or premises entered under clauses 346 or 347 of the Bill, means the occupier of the premises or any other person who apparently represents the occupier.

The term will primarily be used in Chapter 10 of the Bill in relation to compliance and enforcement. Part 4 of Chapter 10 will provide for entry to adjacent premises. The appropriate person for the adjacent premises may observe the execution of the adjacent premises warrant and must provide reasonable facilities and assistance. Part 5 of Chapter 10 will provide for entry and the exercise of powers on premises without a warrant or consent. The appropriate
person for the premises may observe the exercise of powers by the authorised officer and must provide reasonable facilities and assistance.

Also see the definitions of adjacent premises warrant and premises in this clause, and the meaning of occupier in clause 19 of the Bill.

**approved arrangement**

This definition will provide that an ‘approved arrangement’ means an approved arrangement under Chapter 5 of the Bill.

The term will primarily be used in Chapter 5 of the Bill, which deals with approved arrangements. An approved arrangement will enable the Secretary to have oversight of the export operations of the holder of the approved arrangement. For example, an exporter may have an approved arrangement which sets out the ways in which they will meet legislative and importing country requirements in relation to a kind of prescribed goods. In these circumstances, an approved arrangement will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods completely or to a specified place, unless export operations are carried out in accordance with an approved arrangement and certain conditions in relation to an approved arrangement are met.

In circumstances where an approved arrangement, or condition relating to an approved arrangement is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.

Approved arrangements are not limited to persons who are exporting prescribed goods. For example, a third party body who performs certain functions or duties under the Bill, such as Halal certification for meat products, may also have an approved arrangement which sets out their obligations and the procedures under which they will be authorised to perform their functions.

**approved assessor**

This definition will provide that an ‘approved assessor’ is a person, or a person included in a class of persons, approved under subclause 281(1) of the Bill, and a person included in a class of persons specified by rules made under clause 432 of the Bill for the purposes of clause 282 of the Bill.

An approved assessor will be a kind of assessor who may conduct an assessment of goods under Part 2 of Chapter 9 of the Bill, and may, for example, exercise the powers set out in clause 280 of the Bill for the purpose of conducting an assessment of goods.

The term will be used in the definition of assessor.

**approved auditor**

This definition will provide that an ‘approved auditor’ means a person, or a person included in a class of persons, approved under subclause 273(1) of the Bill, and a person included in a class of persons specified by rules made under clause 432 of the Bill for the purposes of clause 274 of the Bill.
An approved auditor will be a kind of auditor who may conduct an audit under Part 1 of Chapter 9 of the Bill, and may, for example, exercise the powers set out in clause 272 of the Bill for the purpose of conducting an audit.

The term will be used in the definition of auditor.

**approved export program**

This definition will provide that an ‘approved export program’ means a program of export operations approved under subclause 311(1) of the Bill.

The term will primarily be used in Division 2 of Part 5 of Chapter 9 of the Bill, which deals with accredited veterinarians and approved export programs. Clause 311(2) of the Bill will provide that an approved export program is a program of export operations to be carried out by an accredited veterinarian or authorised officer for the purpose of ensuring the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material in the course of export operations.

An approved export program will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods completely or to a specified place, unless export operations are carried out in accordance with an approved export program and certain conditions in relation to an approved export program are met.

In circumstances where an approved export program, or condition relating to an approved export program is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.

**assessor**

This definition will provide that an ‘assessor’ means an approved assessor or an authorised officer whose functions and powers include carrying out an assessment of goods under Part 2 of Chapter 9 of the Bill and who may, for example, exercise the powers set out in clause 280 of the Bill in carrying out an assessment of goods.

The Bill will enable an assessment of goods to be carried out in certain circumstances. For example, the Secretary may require an assessment of goods in order to consider an application for a government certificate (see clause 68 of the Bill). The purpose of an assessment of goods will be to verify whether goods comply with relevant legislative and importing country requirements, or matters to be stated on a certificate, prior to the goods being imported into an importing country.

Also see the definition of authorised officer and approved assessor.

**associate**

This definition will provide that an ‘associate’ of a person has a meaning affected by clause 13 of the Bill.

The term will be relevant to Chapter 6 of the Bill in relation to export licences and Part 11 of Chapter 10 of the Bill in relation to the fit and proper person test.
**auditor**

This definition will provide that an ‘auditor’ means an approved auditor or an authorised officer whose functions and powers include conducting an audit under Part 1 of Chapter 9 of the Bill and who may, for example, exercise the powers set out in clause 272 of the Bill in conducting an audit.

The Bill will enable audits to be conducted in relation to export operations. Audits are generally undertaken to verify whether goods are being produced, prepared and exported in accordance with relevant legislative and importing country requirements. Audits can also be used to ensure that a person who performs functions on behalf of the Government, such as a third party authorised officer or the holder of an approved arrangement, is complying with their obligations.

Also see the definition of authorised officer and approved auditor.

**Australian aircraft**

This definition will provide that ‘Australian aircraft’ means an aircraft that is registered under regulations made under the *Civil Aviation Act 1988*.

**Australia New Zealand Food Standards Code**

This definition will provide that the ‘Australia New Zealand Food Standards Code’ has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

The *Food Standards Australia New Zealand Act 1991* currently provides that the *Australia New Zealand Food Standards Code* means the code published under the name *Food Standards Code* in the *Gazette* on 27 August 1987 together with any amendments of the standards in that code:

- approved by a former Council before the *Food Standards Australia New Zealand Act 1991* commenced and published in the *Gazette* as forming part of that code; or
- made under the Food Standards Australia New Zealand Act 1991.

This term will be used in clause 410 of the Bill in relation to sampling methods, and clause 432 of the Bill in relation to the kind of documents that may be incorporated from time to time by the rules made under clause 432 of the Bill.

**Australian fishing zone**

This definition will provide that the ‘Australian fishing zone’ has the same meaning as in the *Fisheries Management Act 1991*.

The *Fisheries Management Act 1991* currently provides that Australian fishing zone means:

- the waters adjacent to Australia within the outer limits of the exclusive economic zone adjacent to the coast of Australia; and
- the waters adjacent to each external Territory within the outer limits of the exclusive economic zone adjacent to the coast of the external Territory;
but does not include:

- coastal waters of, or waters within the limits of, a State or internal Territory; or
- waters that are excepted waters.

The term will be relevant to the meaning of Australian territory in clause 14 of the Bill.

**Australian law**

This definition will provide that an ‘Australian law’ means a law of the Commonwealth, or a law of a State or Territory. This term will also include any legislative instruments made under such a law.

**Australian national**

This definition will provide that ‘Australian national’ means an Australian citizen or a body corporate established by or under a law of the Commonwealth or of a State or Territory. The term will be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill.

**Australian resident**

This definition will provide that ‘Australian resident’ means either:

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

The term will be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill.

**Australian territory**

This definition will provide that ‘Australian territory’ has the meaning given by clause 14 of the Bill.

**authorised officer**

This definition will provide that an ‘authorised officer’ means, except as provided by clause 324 of the Bill, a person who is authorised under clause 291 of the Bill to be an authorised officer under the Bill.

Clause 291 of the Bill will provide that the Secretary may authorise a person, or each person in a class of persons, to be an authorised officer under the Bill, provided that the requirements in clause 291 of the Bill are satisfied. An authorised officer may be a Commonwealth authorised officer, a State or Territory authorised officer, or a third party authorised officer.

A note at the end of this definition will direct the reader to clause 324 of the Bill, which will provide a modified meaning of *authorised officer* for the purposes of Chapter 10 of the Bill. For the purposes of Chapter 10 of the Bill, and any other provision of the Bill to the extent that it relates to Chapter 10, subclause 324(1) of the Bill will provide that an authorised officer means a Commonwealth authorised officer or a State or Territory authorised officer. A reference to an authorised officer in Chapter 10 of the Bill and related provisions will exclude third party authorised officers.
**certificate of registration**

This definition will provide that a ‘certificate of registration’ for a registered establishment means the most recent certificate of registration for the establishment given to the occupier of the establishment under Chapter 4 of the Bill.

If the Secretary registers an establishment, under clause 114 of the Bill the Secretary must give the applicant a certificate of registration. The intent of the certificate of registration is to provide the occupier with a document that shows that their establishment is a registered establishment.

A certificate of registration will not be a government certificate.

Also see the definitions of establishment, occupier and registered establishment.

**civil penalty provision**

This definition will provide that ‘civil penalty provision’ has the same meaning as in the Regulatory Powers Act.

Civil penalty provisions can be applied to a variety of contraventions of the Bill, and have been included in addition to criminal offences with the intention of providing flexibility to take action where non-compliance has been identified. The Secretary may apply to a relevant court for a civil penalty order where a person contravenes a civil penalty provision.

**Commonwealth authorised officer**

This definition will provide that a ‘Commonwealth authorised officer’ means an authorised officer who is an officer or employee of a Commonwealth body. This includes, for example, an officer or employee of the Department who has been authorised to be an authorised officer.

Also see the definition of authorised officer and Commonwealth body.

**Commonwealth body**

This definition will provide that a ‘Commonwealth body’ includes a Department of State, or an authority, of the Commonwealth.

The term will be used in the definition of Commonwealth authorised officer because a Commonwealth authorised officer must be an officer or employee of a Commonwealth body.

**conveyance**

This definition will provide that a ‘conveyance’ means any of the following:

- an aircraft;
- a vessel;
- a vehicle;
- any other means of transport prescribed by the rules.

This term will be used in the definition of premises. Also see the definition of aircraft and vessel.
**corporation**

This definition will provide that a ‘corporation’ means a corporation within the meaning of the Corporations Act, which currently provides that a corporation includes:

- a company;
- any body corporate (whether incorporated in this jurisdiction or elsewhere);
- an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose; and
- an Aboriginal and Torres Strait Islander corporation;

but does not include:

- an exempt public authority; or
- a corporation sole.

**cost-recovery charge**

This definition will provide that a ‘cost-recovery charge’ means:

- a fee prescribed by rules made under clause 432 of the Bill for the purposes of subclause 399(1) of the Bill for a fee-bearing activity; or
- a charge imposed by any of the following laws: the Export Charges (Imposition—Customs) Act 2015, the Export Charges (Imposition—Excise) Act 2015 or the Export Charges (Imposition—General) Act 2015; or
- a late payment fee relating to a fee or charge described in the two points above.

Part 4 of Chapter 11 of the Bill deals with recovering cost-recovery charges.

The term will be used in the definition of relevant Commonwealth liability.

**covering**

This definition will provide that ‘covering’, in relation to goods, includes a bottle, box, capsule, case, container, frame, glass, seal, stopper and wrapper. This list is not intended to be exhaustive, but provides examples of things that may cover goods to which a trade description will be applied (see clause 247 of the Bill), in relation to the covering on goods which were subject to analysis (see clause 414 of the Bill) and the forfeiture of a covering on goods that are forfeited (see clause 416 of the Bill).

**dishonest**

This definition will provide that ‘dishonest’, in relation to conduct engaged by a person, means dishonest according to the standards of ordinary people

This term will be relevant for the purposes of requiring certain persons to disclose matters involving dishonesty as provided for in clauses 187, 299, 365 and 374 and in relation to offence and civil penalty provisions in clause 427A of the Bill.

**economic consequences for Australia**

This definition will provide that ‘economic consequences for Australia’ includes:
• substantial damage to Australia’s trading reputation;
• a restriction on, or the closure of, access to one or more overseas markets for all goods or a kind of goods from Australia.

This term will be relevant to the aggravated offences in clauses 32, 36, 40 and 44 in Part 2 of Chapter 2 of the Bill.

This is not intended to be an exhaustive definition, but will give examples of the kinds of circumstances that will be considered to be economic consequences for Australia for the purpose of the aggravated offences in the Bill.

eligible animal reproductive material

This definition will provide that ‘eligible animal reproductive material’ means prescribed goods that are animal reproductive material.

The term will be relevant to Division 2 of Part 5 of Chapter 9 of the Bill, which will deal with accredited veterinarians and approved export programs. An approved export program will be a program of export operations that may be carried out by an accredited veterinarian or authorised officer for the purpose of ensuring the health and welfare of eligible animal reproductive material in the course of export activities.

Also see the definition of animal reproductive material and prescribed goods.

eligible live animals

This definition will provide that ‘eligible live animals’ means prescribed goods that are live animals.

The term will be relevant to Division 2 of Part 5 of Chapter 9 of the Bill, which will deal with approved export programs and accredited veterinarians. An approved export program will be a program of export operations that may be carried out by an accredited veterinarian or authorised officer for the purpose of ensuring the health and welfare of eligible live animals.

Also see the definition of prescribed goods.

enforcement body

This definition will provide that ‘enforcement body’ has the same meaning as in the Privacy Act, which currently provides that an enforcement body includes, for example, the Australian Federal Police and the police forces of a State or Territory.

The term will be relevant to clause 393 of the Bill, which will provide a specific ground for a person to use or disclose protected information to an enforcement body for the purposes of an enforcement-related activity.

enforcement-related activity

This definition will provide that ‘enforcement-related activity’ has the same meaning as in the Privacy Act.
The term will be relevant to clause 393 of the Bill, which will provide a specific ground for a person to use or disclose protected information to an enforcement body for the purposes of an enforcement-related activity.

**engage in conduct**

This definition will provide that ‘engage in conduct’ means to either perform an act or omit to perform an act. This definition is the same as in the *Criminal Code*.

**entered for export**

This definition will provide that ‘entered for export’ has the meaning given by clause 16 of the Bill.

Clause 16 of the Bill will provide that goods are entered for export if, at any stage in the course of the preparation or production of the goods for export, the goods are presented to, or information about the goods is given to an authorised officer or another person who is authorised to exercise powers or perform functions under the Bill in relation to the goods, for the purpose of the authorised officer or other person exercising powers or performing functions under the Bill in relation to the goods.

The point at which goods are entered for export will be relevant to several offences and civil penalty provisions in Part 1 of Chapter 2 of the Bill.

This term will also be used in Part 2 of Chapter 8 of the Bill in relation to false trade descriptions.

Also see the definition of authorised officer, prepare and produce.

**establishment**

This definition will provide that ‘establishment’ has the same meaning as premises.

The term will primarily be used in Chapter 4 of the Bill, which sets out a number of matters in relation to registered establishments. A registered establishment will be a kind of establishment.

The term will also be used in the definitions of certificate of registration, occupier and registered establishment.

Also see the definition of premises.

**evidential material**

This definition will provide that ‘evidential material’ has the same meaning as in the Regulatory Powers Act, which currently provides that it means any of the following:

- a thing with respect to which an offence provision or a civil penalty provision subject to investigation under this Part has been contravened or is suspected, on reasonable grounds, to have been contravened;
- a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision;
• a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision.

The term will be used in the definition of investigation warrant. Also see the definition of Regulatory Powers Act.

*examine*

This definition will provide that ‘examine’ includes count, gauge, grade, measure and weigh. The term will provide examples of the kinds of activities which expand on the ordinary meaning of examine, and is not intended to be exhaustive.

An assessor may examine goods or export operations for the purpose of an assessment of goods under clause 280 of the Bill. The Secretary may also examine export operations in relation to goods for the purpose of making decisions in relation to government certificates and export permits under clauses 68 and 241 of the Bill respectively.

*executive officer*

This definition will provide that ‘executive officer’ of a body corporate means a person, by whatever name called and whether or not a director of the body corporate, who is concerned in, or takes part in, the management of the body corporate.

This definition will clarify that the meaning of executive officer includes both executive and non-executive directors. The term will be relevant to Part 10A of the Bill which will deal with the liability of executive officers and adverse publicity orders.

*expiry date*

This definition will provide that ‘expiry date’:

• for the accreditation of a property – has the meaning given by subclause 82(4); or

• for the registration of an establishment – has the meaning given by subclause 115(4); or

• for an approved arrangement – has the meaning given by subclause 154(4); or for an export licence – has the meaning given by subclause 194(4).

The term will be relevant to Chapter 3, 4, 5 and 6 of the Bill applying to accredited properties, registered establishments, approved arrangements and export licences.

*export*

This definition will provide that ‘export’ means export from Australian territory to a place outside Australian territory. A note to this definition will direct the reader to clause 20 of the Bill, which will provide for when goods are exported.

The term will be used throughout the Bill. For example, numerous offence and civil penalty provisions in Division 4 of Part 1 of Chapter 2 of the Bill will apply from the point at which goods are exported.
The term will be used in the definition of export operations, permanently prohibited goods and secondary permissible purpose.

Also see the definition of Australian territory and goods.

**export business**

This definition will provide that ‘export business’ means a business that carries out export operations in relation to a kind of goods.

The term will be relevant to whether a person is a fit and proper person for the purpose of an export licence under Chapter 6 of the Bill. In particular, the Secretary may have regard to the interests of the industry, or industries that relate to the person’s export business for the purpose of determining whether a person is a fit and proper person under clause 372 of the Bill.

**export licence**

This definition will provide that ‘export licence’ means an export licence granted under Chapter 6 of the Bill.

An export licence will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods completely or to a specified place, unless an exporter holds an export licence, and complies with certain conditions in relation to the export licence.

In circumstances where an export licence, or condition relating to an export licence, is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.

Chapter 6 of the Bill will enable the Secretary to grant an export licence that authorises the holder to carry out a kind of export operations in relation to a kind of prescribed goods, if deemed necessary. Licences ensure that the holder is a fit and proper person, of sound financial standing, and competent to be involved in export operations.

**export operations**

This definition will provide that ‘export operations’ has the meaning given by clause 16 of the Bill.

This term represents an important concept throughout the Bill and will be relevant to, for example, accredited properties, registered establishments, approved arrangements and export licences. The term will be used in the definition of export business and occupier.

Also see the definition of authorised officer, export, goods, prepare and produce.

**export permit**

This definition will provide that an ‘export permit’ is a permit issued under Part 2 of Chapter 7 of the Bill.
The term will be relevant to Chapter 7 of the Bill which will set out a number of matters in relation to export permits. Chapter 7 of the Bill will enable a person to apply for an export permit, which will provide permission to export prescribed goods from Australia. The Secretary may grant a permit, which may be subject to conditions, once the Secretary is satisfied that the prescribed goods meet legislative and importing country requirements.

An export permit will be a kind of prescribed export condition. That is, rules will be able to be made for the purpose of clause 29 of the Bill to prohibit the export of a kind of prescribed goods completely or to a specified place, unless there is an export permit in force for those prescribed goods, and certain conditions in relation to the export permit are complied with.

In circumstances where an export permit, or condition relating to an export permit, is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.

**false trade description**

This definition will provide that a ‘false trade description’ has the meaning given by clause 251 of the Bill, which will provide that a trade description for goods is a false trade description if it is false, or likely to mislead in a material respect due to:

- anything contained in or omitted from the description; or
- any alteration of or interference with the description (whether by way of addition, removal, defacement or otherwise).

The term will primarily be relevant to Part 2 of Chapter 8 of the Bill, which deals with trade descriptions.

**Federal Circuit Court**

This definition will provide that the ‘Federal Circuit Court’ means the Federal Circuit Court of Australia. This term will be used in the definition of relevant court, which will primarily be relevant to Chapter 10 of the Bill in relation to compliance and enforcement. For example, clause 355 of the Bill will provide that civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court.

**Federal Court**

This definition will provide that ‘Federal Court’ means the Federal Court of Australia. This term will be used in the definition of relevant court, which will primarily be relevant to Chapter 10 of the Bill in relation to compliance and enforcement. For example, clause 355 of the Bill will provide that civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court.

**fee-bearing activities**

This definition will provide that ‘fee-bearing activities’ has the meaning given by subclause 399(1) of the Bill as activities carried out by, or behalf of, the Commonwealth in relation to the performance of functions or powers under the Bill. For example, a fee-bearing activity may include an audit of export operations or an assessment of goods under the Bill.
**fish**

This definition will provide that ‘fish’ means aquatic vertebrates and aquatic invertebrates but does not include mammal or birds. The term will be used in the definitions of prepare, produce and take.

**fit for human consumption**

This definition will provide that ‘fit for human consumption’ means safe and suitable for human consumption, for example, suitable for consumption as food or drink. The term will be used in the definition of food.

**food**

This definition will provide that ‘food’ includes:

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

This definition of food applies whether or not the substance or thing is in a condition fit for human consumption.

The term will be used in the definition of goods, which provides that goods will include food.

**foreign aircraft**

This definition will provide that ‘foreign aircraft’ means an aircraft other than an Australian aircraft. The term will be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill.

Also see the definition of aircraft.

**foreign person or body**

This definition will provide that ‘foreign person or body’ means any of the following:

- an individual who is not an Australian national or an Australian resident;
- a body corporate that is not an Australian national or an Australian resident;
- a body politic of a foreign country;
- a trust, where the trustee, or a majority of the trustees, are covered by any or all of the above paragraphs.

The term will be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill.

Also see the definitions of Australian national and Australian resident.
**foreign vessel**

This definition will provide that ‘foreign vessel’ means a vessel other than an Australian vessel. The term will be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill.

Also see the definition of vessel.

**goods**

This definition will provide that ‘goods’ means:

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

but does not include narcotic goods within the meaning of the *Customs Act 1901*.

The term will be central to the application and scope of the Bill.

The term will be used in the definitions of covering, economic consequences for Australia, export, export business, export operations, government certificate, importing country requirements, issuing body, non-prescribed goods, occupier, permanently prohibited goods, prepare, prescribed goods, produce, relevant person and secondary permissible purpose.

Also see the definitions of animal, plant, and food.

**government certificate**

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

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

The term will primarily be relevant to Part 3 of Chapter 2 of the Bill, which will provide for the issue of government certificates in relation to both prescribed and non-prescribed goods.

The term will be used in the definition of issuing body.

Also see the definitions of goods and Australian territory.

**husbandry activities**

This definition will provide that ‘husbandry activities’, in relation to a live animal, means activities relating to the care and maintenance of the animal. Examples include, but are
not limited to, daily monitoring and feeding. The term will be used in the definition of produce.

**importing country requirement**

This definition will provide that an ‘importing country requirement’, in relation to goods that are to be imported into a country from Australian territory or from a part of Australian territory, means a requirement of that country that must be met before the goods may be imported into that country from Australian territory or from that part of Australian territory. This definition is intended to be operate consistently with international agreements to which Australia is a party. It will be an object of the Bill (set out in clause 3 of the Bill) to ensure that goods that are exported meet importing country requirements relating to the goods, to enable and maintain overseas market access for goods from Australia. The term will be used throughout the Bill.

**installation**

This definition will provide that ‘installation’ has the meaning given by clause 17 of the Bill. The term will be used in the definition of a vessel. A vessel includes an installation for the purposes of the Bill.

**integrity**

This definition will provide that ‘integrity’ has the meaning given by clause 18 of the Bill.

It will be an object of the Bill (set out in clause 3 of the Bill) to ensure the integrity of goods that are exported. For example, the Secretary may revoke a government certificate under clause 75 of the Bill if the integrity of the goods cannot be ensured.

**International Plant Protection Convention**

This definition will provide that the ‘International Plant Protection Convention’ means the International Plant Protection Convention, done at Rome on 6 December 1951, as in force from time to time.

Rules made under the Bill may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter in an instrument or writing made under the International Plant Protection Convention (see clause 432 of the Bill).

**investigation warrant**

This definition will provide that ‘investigation warrant’ means:

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

The term will be used in Part 3 of Chapter 10 of the Bill, which deals with investigations in relation to non-compliance with the Bill.
**issuing body**

This definition will provide that an ‘issuing body’, for a government certificate in relation to a kind of goods, means a person or body that may issue a government certificate in relation to goods of that kind under clause 61 of the Bill.

The term will be used under Part 3 of Chapter 2 of the Bill in relation to government certificates. Clause 63 of the Bill will provide that an issuing body is the person or body prescribed by the rules in relation to goods of that kind. If no person is prescribed in relation to those kinds of goods, the issuing body will be the Secretary.

**issuing officer**

This definition will provide that an ‘issuing officer’ means a magistrate, a Judge of the Federal Court or Federal Circuit Court, or a Judge or a State or Territory court. Issuing officers will have the power to issue a monitoring or investigation warrant under Chapter 10 of the Bill.

**label**

This definition will provide that a ‘label’ includes a tag, band, ticket, brand and pictorial or other descriptive matter. This definition will give examples of the kind of things that are labels for the purposes of the Bill and will is not intended to be exhaustive. The definition of mark will include a label.

The term will be relevant to trade descriptions under Part 2 of Chapter 8 of the Bill and certificates of analysis (see clause 414 of the Bill).

**landing place**

This definition will provide that ‘landing place’ means any place where an aircraft can land, which could include an area of land or water, and an area on a building or a vessel. The term will be used in clause 253 of the Bill, which will provide that it is an offence to bring prescribed goods with a false trade description to any landing place for the purpose of exporting them.

**late payment fee**

This definition will provide that ‘late payment fee’ has the meaning given by clause 403 of the Bill. It will be used under Part 4 of Chapter 11 of the Bill, which deals with cost recovery. A late payment fee will be a fee that is due and payable if the cost-recovery charge (specified in the rules) is not paid within the time specified in the rules.

The term will be used in the definition of cost-recovery charge.

**manager**

This definition will provide that a ‘manager’ of a property means the person who is responsible for the day-to-day management of that property. This term will be used in Chapter 3 of the Bill in relation to accredited properties. The Secretary may, on application by the manager of a property, accredit a property for a kind of export operations in relation to a
kind of prescribed goods. Managers of an accredited property must comply with certain conditions.

**mark**

This definition will provide that a ‘mark’ includes a stamp, seal and label. This definition will give examples of the kind of things that are marks for the purposes of the Bill and is not intended to be exhaustive.

The term will be relevant to Part 2 of Chapter 8 of the Bill in relation to trade descriptions. The meaning of trade description will include a mark (see clause 246 of the Bill).

The term will also be used in the definition of official mark, and will be relevant to Part 3 of Chapter 8 of the Bill, which will deal with official marks.

**monitoring warrant**

This definition will provide that ‘monitoring warrant’ means a warrant issued under section 32 of the Regulatory Powers Act as it applies in relation to the Bill.

The term will be relevant to Part 2 of Chapter 10 of the Bill which deals with monitoring.

**natural resources**

This definition will provide that ‘natural resources’ has the same meaning as in paragraph 4 of Article 77 of the United Nations Convention on the Law of the Sea, which currently provides that natural resources consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. The term will be used in clause 9 of the Bill and relates to the jurisdiction of the Bill on or in the continental shelf.

**nominated export permit issuer**

This definition will provide that ‘nominated export permit issuer’ means a person who:

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

Nominated export permit issuers will be able to issue export permits if the power to issue export permits for goods of that kind has been subdelegated to the nominated export permit issuer under paragraph 288(2)(c).

**non-prescribed goods**

This definition will provide that ‘non-prescribed goods’ means goods of a kind that are not prescribed goods.

Goods that are not prescribed as prescribed goods in the rules made under clause 432 of the Bill for the purpose of subclause 28(1) will be non-prescribed goods. In addition, subclause 28(3) of the Bill will provide that the rules made under clause 432 of the Bill for the purposes of clause 28 may prescribe the circumstances in which a kind of goods is taken not
to be prescribed goods for the purposes of the Bill (that is, when the goods will be taken to be non-prescribed goods).

**notice of intention to export**

This definition will provide that a ‘notice of intention to export’ means a notice under clause 243 of the Bill. The term will primarily be relevant to Part 1 of Chapter 8 of the Bill, which deals with notices of intention to export.

A notice of intention to export will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods completely or to a specified place unless an exporter has given a notice of intention to export and certain condition in relation to that notice of intention to export are met.

In circumstances where a notice of intention to export or a condition related to a notice of intention to export is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.

A notice of intention to export serves as advice to the Secretary about a person’s intention to export a kind of prescribed goods. This allows the Government to manage the export process effectively, particularly when sufficient time is needed to, for example, examine documents, verify sourcing and preparation details, and assess a consignment prior to export.

**occupier**

This definition will provide that an ‘occupier’ of an establishment where export operations in relation to goods are, were, or will be carried out, has the meaning given by clause 19 of the Bill.

The term will be used in the definitions of appropriate person and certificate of registration. Also see the definitions of occupier, export operations, and goods.

**official mark**

This definition will provide that an ‘official mark’ means a mark that is an official mark for the purposes of the Bill under rules made under clause 432 of the Bill for the purposes of subclause 255(1) of the Bill.

The term will primarily be used in Part 3 of Chapter 8 of the Bill which deals with official marks.

An official mark will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods unless a kind of official mark is applied, or unless certain conditions relating to official marks are met.

Division 3 of Part 3 of Chapter 8 of the Bill will set out offence and civil penalty provisions that relate to official marks. The offence and civil penalty provisions under clauses 38 to 49 of the Bill will also apply in circumstances where an official mark or a condition relating to an official mark are prescribed export conditions for a kind of prescribed goods. The offence and
civil penalty provisions under clause 50 of the Bill may apply in relation to official marks if the goods are non-prescribed goods.

The term will also be used in the definition of official marking device. Also see the definition of mark.

**official marking device**

This definition will provide that an ‘official marking device’ has the meaning given by subclause 257(1) of the Bill, which will provide that it is a device that is capable of being used to apply an official mark. The term will be used primarily in Part 3 of Chapter 8 of the Bill in relation to official marks. As this definition covers many types of devices, the rules may prescribe the kinds of devices that are not official marking devices.

**permanently prohibited goods**

This definition will provide that ‘permanently prohibited goods’ means goods which are prohibited absolutely from export under Subdivision A of Division 2 of Part 1 of Chapter 2 of the Bill.

**person**

This definition will provide that the meaning of ‘person’ is affected by clauses 421, 422 and 423 of the Bill. Person is also defined in the Acts Interpretation Act to include a body corporate.

The Bill will apply to a partnership, unincorporated association and trust as if it was a person, subject to the changes set out in clauses 421, 422 and 423 of the Bill.

The term will be used throughout the Bill and in various definitions.

**personal information**

This definition will provide that ‘personal information’ has the same meaning as in the Privacy Act, which currently provides that ‘personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not; and
- whether the information or opinion is recorded in a material form or not.

The term will be used in the definition of sensitive information.

**plant**

This definition will provide that a ‘plant’ means a live plant or a dead plant, and includes any part of a plant.

The term will be used in the definition of goods, which will provide that a plant, and an article, substance or thing (including reproductive material) derived from a plant whether or not in combination with any other article, substance or thing, are goods.

The term will also be used in the definition of produce.
**port**

This definition will provide that a ‘port’ includes a harbour.

The term will be used in clause 253 of the Bill, which will provide that a person may commit an offence and be liable for a civil penalty for bringing prescribed goods with a false trade description to a port for the purpose of exporting the prescribed goods. The term will also be used in clause 424 of the Bill, which will require the Minister to report to Parliament on certain matters in relation to the carriage of livestock on a vessel to a port outside the Australian territory.

**PPSA security interest**

This definition will provide that ‘PPSA security interest’ means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies. Two notes will be included at the end of the definition of PPSA security interest. Note 1 will provide that the *Personal Property Securities Act 2009* applies to certain security interests in personal property and will refer the reader to the following provisions of that Act:

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

Note 2 will provide that for the meaning of *transitional security interest*, see section 308 of the *Personal Property Securities Act 2009*.

The term PPSA security interest will be used in the definition of owner for the purposes of clause 414 of the Bill in relation to claims for compensation for the damage or destruction of goods.

**premises**

This definition will provide that ‘premises’ includes the following:

- a structure, building or conveyance;
- a place (either enclosed or built on), including a place situated underground or under water;
- a part of a structure, building, conveyance or a place.

A note to this definition will direct the reader to clause 332 of the Bill, which will provide that, in Part 4 of Chapter 10 of the Bill, *premises* do not include a conveyance.

The term will give examples of kinds of premises and is not intended to be exhaustive. The term will primarily be relevant to Chapter 10 of the Bill in relation to compliance and enforcement.

The term will be used in the definitions of appropriate person, establishment and property. Also see the definition of conveyance.

**prepare**

This definition will provide that ‘prepare’, in relation to goods, includes:
• admission of animals for slaughter, being animals from which goods are to be derived;
• slaughtering or killing animals from which goods are to be derived;
• dressing carcases from which goods are to be derived;
• taking (catching, capturing or harvesting), whether from the wild or otherwise, fish or fish from which goods are to be derived;
• processing, packing and storing goods;
• treating goods;
• handling and loading goods.

This term will primarily be relevant to the definition of export operations that will be set out in clause 16 of the Bill. It will also be used in various offence provisions in Part 2 of Chapter 2 of the Bill.

A note to this definition will advise the reader that take, in relation to fish, means catch, capture, or harvest.

**prescribed agriculture law**

This definition will provide that a ‘prescribed agriculture law’ means a law (other than the Bill) that is administered by the Minister and is prescribed by the rules made under clause 432 of the Bill.

The term will be used in the definitions of relevant Commonwealth liability and secondary permissible purpose.

**prescribed export conditions**

This definition will provide that ‘prescribed export condition’ means conditions prescribed by rules made under clause 432 of the Bill for the purposes of clause 29 of the Bill.

Clause 29 of the Bill will allow the rules to prohibit the export of prescribed goods unless conditions prescribed by the rules are complied with. For example, the rules may prescribe that the export of meat is prohibited unless it is produced in a registered establishment, and certain conditions in relation to the registered establishment are met. A person may commit an offence or be liable to a civil penalty if they export prescribed goods in contravention of a prescribed export condition.

**prescribed goods**

This definition will provide that ‘prescribed goods’ means goods of a kind prescribed by rules made under clause 432 of the Bill for the purposes of subclause 28(1) of the Bill, but does not include a kind of goods in the circumstances prescribed by rules made for the purposes of subclause 28(4) of the Bill.

The concept of prescribed goods will be central to the imposition of export regulatory controls.

A note will be included at the end of the definition of prescribed goods and will advise the reader that the rules made under clause 432 of the Bill may prescribe a class of goods for the purposes of subclauses 28(1) or 28(4) of the Bill.
produce

This definition will provide that ‘produce’, in relation to goods, includes the following:

- pick or harvest (whether from the wild or otherwise):
  - goods; or
  - goods from which goods are to be derived;
- capture or take (whether from the wild or otherwise):
  - goods other than fish; or
  - goods other than fish from which goods are to be derived;
- propagate, rear, keep or breed (including as part of aquaculture operations):
  - fish; or
  - fish from which goods are to be derived;
- breed or carry out husbandry activities in relation to:
  - live animals; or
  - live animals from which goods are to be derived;
- grow:
  - plants; or
  - plants from which goods are to be derived.

This term will primarily be relevant to the definition of export operations that will be set out in clause 16 of the Bill. It will also be used in various offence provisions in Part 2 of Chapter 2 of the Bill.

property

This definition will provide that ‘property’ has the same meaning as premises. The definition of property will also have the same meaning as establishment. The term will be used in the definitions of accredited property, manager and premises.

protected information

This definition will provide that ‘protected information’ means information obtained under, or in accordance with, the Bill. The term will be used in Part 3 of Chapter 11 of the Bill in relation to confidentiality of information.

protected person

This definition will provide that a ‘protected person’ has the meaning given by subclause 430(4) of the Bill, which will provide that a protected person means a person who is, or was, the Minister, the Secretary, an authorised officer or an officer or employee of the Department. Clause 430 of the Bill will provide that no civil proceeding will lie against a protected person in relation to anything done, or omitted to be done, in good faith under a provision of the Bill.

registered establishment

This definition will provide that ‘registered establishment’ means an establishment that is registered under Chapter 4 of the Bill.

A registered establishment may be a prescribed export condition for some kinds of prescribed goods. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill
may prohibit the export of a kind of prescribed goods completely or to a certain place unless export operations in relation to the goods are carried out at a registered establishment, and certain conditions in relation to the registered establishment are met.

In circumstances where a registered establishment, or condition in relation to a registered establishment, is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.

The term uses the definition of establishment.

**Regulatory Powers Act**

This definition will provide that the ‘Regulatory Powers Act’ means the *Regulatory Powers (Standard Provisions) Act 2014*. This term will be used throughout the Bill, particularly in Chapter 10 of the Bill in relation to compliance and enforcement. The Bill will adopt the Regulatory Powers Act, with some modification, to avoid duplicating standard regulatory powers, such as monitoring and investigation.

The term will be used in the definitions of civil penalty provisions, this Act, evidential material, investigation warrant, monitoring warrant and throughout the Bill.

**related provision**

This definition will provide that ‘related provision’ means:

- a provision of the Bill that creates an offence;
- a civil penalty provision under the Bill;
- a provision of the Crimes Act or the *Criminal Code* that relates to the Bill and creates an offence.

The term will be used in Chapter 10 of the Bill in relation to compliance and enforcement.

**relevant Commonwealth liability**

This definition will provide that a ‘relevant Commonwealth liability’ means a cost-recovery charge that is due and payable, or a pecuniary penalty, or other liability for an amount, imposed by or under a prescribed agriculture law.

A note to the definition will provide that a relevant Commonwealth liability of a person is taken to have been paid for the purposes of a provision of the Bill in certain circumstances (see clause 431 of the Bill). Whether a person has a relevant Commonwealth liability that is due and payable will be relevant to a number of provisions of the Bill. For example, it affects whether the Secretary may have regard to whether a person has a relevant Commonwealth liability when deciding whether to register an establishment in Chapter 4 of the Bill.

Also see the definitions of cost-recovery charge and prescribed agriculture law.

**relevant court**

This definition will provide that ‘relevant court’ means the Federal Court, the Federal Circuit Court or a court of a State or Territory that has jurisdiction in relation to matters arising under the Bill. Also see the definition of Federal Court and Federal Circuit Court.
The term will primarily be relevant to Chapter 10 of the Bill in relation to compliance and enforcement. For example, clause 355 of the Bill will provide that civil penalty orders may be sought under Part 4 of the Regulatory Powers Act from a relevant court.

**relevant person**

This definition will provide that a ‘relevant person’ has a number of different meanings.

For an audit under Part 1 of Chapter 9 of the Bill, relevant person will have the meaning given by clause 269 of the Bill.

For an assessment of goods under Part 2 of Chapter 9 of the Bill, relevant person will have the meaning given by clause 278 of the Bill.

For a reviewable decision referred to in column 1 of an item in the table in subclause 381(1) of the Bill, relevant person will mean the person referred to in column 3 of that item in relation to that decision.

For a reviewable decision prescribed by rules made under clause 432 of the Bill for the purposes of subclause 381(2) of the Bill, relevant person will mean the person specified by the rules as the relevant person for that decision.

**relevant premises**

This definition will provide that ‘relevant premises’ in Part 5 of Chapter 10 of the Bill has the meaning given by clause 345 of the Bill. Clause 345 of the Bill will provide that ‘relevant premises’ means premises that are, or that form part of, a registered establishment, and premises in or on, or that form part of, an accredited property.

This term will be used in Part 5 of Chapter 10 of the Bill in relation to monitoring powers. An authorised officer may enter relevant premises for the purposes of determining whether the Bill has been, or is being, complied with; or determining whether information provided for the purposes of the Bill is correct.

**reviewable decision**

This definition will provide that ‘reviewable decision’ has the meaning given by subclauses 381(1) and 381(2) of the Bill. Subclause 381(1) of the Bill will list decisions that are reviewable and subclause 381(2) of the Bill will provide that rules may prescribe further decisions that are reviewable decisions.

Applications can be made to the Administrative Appeals Tribunal for a decision made personally by the Secretary, or for a decision that has been reviewed by the Secretary or other internal reviewer.

The term will be used in the definition of relevant person.

**rules**

This definition will provide that ‘rules’ means rules made by the Secretary under clause 432 of the Bill.
Clause 432 of the Bill will provide that the Secretary may, by legislative instrument, make rules prescribing matters required or permitted by the Bill to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Bill. The rules will be legislative instruments for the purposes of the Legislation Act.

The term will be used throughout the Bill and in various definitions.

**secondary permissible purpose**

This definition will provide that ‘second permissible purpose’ means a purpose of either:

- achieving the objects of the Bill; or
- administering or enforcing:
  - a prescribed agriculture law; or
  - another Australian law to the extent that the law relates to public health, food safety, biosecurity, the export of goods from Australian territory, the health and welfare of live animals, or the health and condition of animal reproductive material.

This term will be used in Part 3 of Chapter 11 of the Bill, which will deal with confidentiality of information. For example, the Bill enables the Secretary to authorise the use or disclosure of information for secondary permissible purposes.

**Secretary**

This definition will provide that ‘Secretary’ means the Secretary of the Department.

**sensitive information**

This definition will provide that ‘sensitive information’ means information or an opinion about an individual’s criminal record that will also be personal information. The term will be used in Part 3 of Chapter 11 of the Bill in relation to confidentiality of information.

**State or Territory authorised officer**

This definition will provide that ‘State or Territory authorised officer’ means an authorised officer who is an officer or employee of a State or Territory body.

The term will primarily be used in Part 4 of Chapter 9 of the Bill, which deals with authorised officers.

Also see the definition of authorised officer and State or Territory body.

**State or Territory body**

This definition will provide that a ‘State or Territory body’ includes a Department of State, or an authority, of a State or Territory.

The term will primarily be used in Parts 3 and 4 of Chapter 9 of the Bill, which will deal with powers of the Secretary and authorised officers respectively. The term will also be used in the definition of State or Territory authorised officer.
**take**

This definition will provide that ‘take’, in regards to fish, means catch, capture or harvest. This term will be used in the definitions of prepare and produce.

**tariff rate quota certificate**

This definition will provide that a ‘tariff rate quota certificate’ means a certificate provided for by rules made under clause 432 of the Bill for the purposes of clause 264 of the Bill.

Tariff rate quotas between the Government and trading partners enable a specific quantity of exported product to enter the importing country at a reduced tariff rate. Tariff rate quota certificates are issued in respect of an export consignment to facilitate its entry under the relevant concessional tariff rate applicable to the tariff rate quota.

The term will be used in the definition of government certificate, which will provide that a tariff rate quota certificate is not a government certificate.

**temporary prohibition determination**

This definition will provide that a ‘temporary prohibition determination’ means a determination made under paragraphs 24(1)(a) or 24(1)(b) of the Bill.

Subdivision B of Division 2 of Part 1 of Chapter 2 of the Bill will deal with temporary prohibition determinations. For example, clause 24 of the Bill will enable the Minister to determine, through legislative instrument, that certain kinds of goods are temporarily prohibited from export from the Australian territory or part of the Australian territory either absolutely for a specified period of time, or prohibited to a specified place for a specified period of time. However, the Minister may only make a temporary prohibition determination if the Minister is satisfied that the determination is necessary:

- to protect human, animal or plant life or health; or
- to secure compliance with an Australian law.

The export of goods that are permanently prohibited goods will enliven the offences and civil penalty provisions under clauses 30 to 37 of Chapter 2 of the Bill.

**third party authorised officer**

This definition will provide that ‘third party authorised officer’ means a person who is authorised to be an authorised officer under paragraph 291(6)(a) of the Bill.

Paragraph 291(3) of the Bill will enable a person who is not an officer or employee of a Commonwealth body or a State or Territory body to apply to the Secretary to be a third party authorised officer.

Also see the definition of authorised officer.

**this Act**

This definition will provide that ‘this Act’ includes any legislative instruments made under the Bill, and the Regulatory Powers Act as it applies in relation to the Bill. Therefore, a
reference in the Bill to this Act will include a reference to the rules made under clause 432 of the Bill, which will be legislative instruments.

The term will be used throughout the Bill and in various definitions. Also see the definition of Regulatory Powers Act.

**trade description**

This definition will provide that ‘trade description’ has the meaning given by subclauses 246(1) and 246(2) of the Bill.

Subclause 246(1) of the Bill will provide that a trade description for goods is a description or statement (whether in English or any other language), or a pictorial representation, indication or suggestion (direct or indirect) that describes the goods. A trade description for goods will include, for example, the country or place where the goods were made, produced or grown.

A trade description will be a kind of prescribed export condition. That is, rules made under clause 432 of the Bill for the purpose of clause 29 of the Bill may prohibit the export of a kind of prescribed goods completely or to a specified place unless a certain trade description is applied to the prescribed goods, or certain conditions relating to trade descriptions are met.

In circumstances where a trade description or condition relating to a trade description is a prescribed export condition for a kind of prescribed goods, the offence and civil penalty provisions under clauses 38 to 49 of the Bill will apply.


This term will be used in clause 10 of the Bill, which deals with the application of the Bill.

**use**

This definition will provide that ‘use’, in relation to information, includes making a record of something. This is intended to expand the ordinary meaning of use and is not an exhaustive definition.

**vessel**

This definition will provide that ‘vessel' means any kind of vessel used in navigation by water, however propelled or moved, including:

- a barge or other floating craft;
- an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

The definition will also include an installation and any floating structure.

The term will be used in Part 1 of Chapter 1 of the Bill in relation to the application of the Bill. The term will be also used in the definition of installation that will be set out in clause 17 of the Bill.
Clause 13  Meaning of associate

Clause 13 will provide the meaning of the term ‘associate’. Clause 12 of the Bill will define associate as having the meaning given by clause 13.

The definition will allow the Secretary to take into account the association between a certain person or corporation (an associate) and a person who has made certain applications or to which certain decisions under the Bill may relate. This is intended to identify circumstances where the association may be relevant to the Secretary’s decision-making powers under the Bill.

Subclause 13(1) will provide that an associate of a person (the first person), is:

- a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of the first person or any corporation of which the first person is an officer or employee or in which the first person holds shares;
- a spouse, de facto partner, child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of the first person;
- a child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of a spouse or de facto partner of the first person;
- any other person not mentioned above who is or was directly or indirectly concerned in or in a position to control or influence the conduct of a business or undertaking of the first person or a corporation of which the first person is an officer or employee, or in which the first person holds shares;
- a corporation of which the first person or any of the other persons mentioned above is an officer or employee, or in which the first person, or any of those other persons, holds shares; and
- another body corporate that is a related body corporate (within the meaning of the Corporations Act) of the first person, if the first person is a body corporate.

Subclause 13(2) will clarify that, without limiting who is a child for the purposes of the Bill, the child of another person is:

- a stepchild or adopted child of the other person; or
- a child of the other person within the meaning of the Family Law Act 1975.

Subclause 13(3) will state that, without limiting who is a stepchild of another person for the purposes of the Bill, a de facto partner of the other person is the stepchild of the other person if the child would be the other person’s stepchild except that the other person is not legally married to the partner.

Subclause 13(4) will state that, without limiting who is a parent of a person for the purposes of the Bill, a person (the first person) is the parent of another person (the second person) if the other person is a child of the person because of the definition of child in subclause 13(2).

Subclause 13(5) will clarify that, for the purposes of the Bill, if one person is the child of another person because of the definition of child in subclause 13(2), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.
Clause 14  Meaning of Australian territory

Clause 14 will provide for the meaning of the term ‘Australian territory’. Clause 12 of the Bill will define Australian territory to have the meaning given by clause 14.

This meaning will be necessary to clearly set out the circumstances in which the Bill applies in relation to certain activities and conduct under the Bill. For example:

- Clause 20 of the Bill will rely on the meaning of Australian territory to determine when goods have been exported.
- Division 2 of Part 1 of Chapter 2 of the Bill will rely on the meaning of Australian territory in relation to goods that are prohibited from export on a permanent or temporary basis. Offences may apply when these goods are exported from Australian territory.

Clause 14 will provide that a reference to Australian territory in the Bill is a reference to each of the following:

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

A note will be included at the end of clause 14, which will direct the reader to subclause 8(2) of the Bill, which will provide that the rules made under clause 432 of the Bill may extend the Bill, or any provisions of the Bill, to an external Territory and to certain other areas. If this occurs, the area covered by the extended application of the Bill becomes part of the Australian territory.

Clause 15  Meaning of entered for export

Clause 15 will provide for the meaning of the term ‘entered for export’, which will be defined by clause 12 of the Bill to have the meaning given by clause 15.

Clause 15 will provide that goods are entered for export if, in the course of the preparation or production of the goods for export, the goods are presented to, or information about the goods is given to, an authorised officer or another person who is authorised to exercise powers or perform functions under the Bill in relation to the goods, for the purpose of the authorised officer or other person exercising powers or performing functions under the Bill in relation to the goods. For example, goods will be entered for export at the point a person gives information to an assessor while an assessment of goods is being conducted.

The point at which goods are entered for export will be relevant to several offences and civil penalty provisions in Part 1 of Chapter 2 of the Bill. For example, clauses 48 and 49 of the Bill will apply when a person makes a false or misleading representation about prescribed goods when those goods are entered for export generally, or to a certain place, respectively. Clause 50 of the Bill will apply when a person makes a false or misleading representation about non-prescribed goods when those goods are entered for export.
This term will also be used in Part 2 of Chapter 8 of the Bill in relation to trade descriptions. Clause 253 of the Bill will provide that goods to which a false trade description has been applied must not be entered for export.

**Clause 16  Meaning of export operations**

Clause 16 will provide the meaning of the term ‘export operations’, which will be defined by clause 12 of the Bill to have the meaning given by clause 16.

Clause 16 will provide that *export operations* means any of the following:

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

Examples of operations will be included after the definition in clause 16. Those examples will be:

- for the purposes of operations to produce, or prepare, goods for export—breeding or carrying out husbandry activities in relation to livestock from which meat for export is to be derived;
- for the purposes of operations (other than operations to export goods or to produce or prepare goods for export) in relation to goods for export before they are exported—transporting goods, applying a trade description or official mark to goods, carrying out certification functions in relation to goods, and issuing an export permit for a kind of prescribed goods;
- for the purposes of operations in relation to goods that have been exported up until the delivery of the goods to their final overseas destination—monitoring the goods during their journey to the importing country and up until their delivery to their final overseas destination or, in the case of live animals intended to be slaughtered, up until and including the point of slaughter; and
- for the purposes of any other operations in relation to the export of goods—operations for the purpose of assuring the supply chain relating to certain prescribed goods up until their delivery to their final overseas destination, and manufacturing official marks or official marking devices. A note will be included at the end of clause 16 which will direct the reader to clause 20 of the Bill which provides for when goods are exported.

The concept of carrying out of export operations will be an integral part of regulating the export of goods from Australia under the Bill. The concept will be central to, for example, the accreditation of a property, registration of an establishment, approval of an arrangement and the issuing of a licence.

**Clause 17  Meaning of installation**

Clause 17 will provide for the meaning of the term ‘installation’, which will be defined by clause 12 of the Bill to have the meaning given by clause 17.
Clause 17 will provide that an **installation** is a structure that is:

- able to float, or to be floated; and
- able to move, or to be moved, as an entity from one place to another; and
- is, or is to be, used wholly or principally in exploring or exploiting natural resources (such as fish or minerals) with equipment that is on or forms part of the structure, or operations or activities associated with, or incidental to, activities of a kind in relation to exploring or exploiting natural resources; and
- is either attached to or resting on the seabed, or is attached semi-permanently or permanently to a structure that is attached to or resting on the seabed.

A note will be included at the end of clause 17 which will direct the reader to the definition of vessel in clause 12 of the Bill. The note will clarify that an installation will be a vessel for the purposes of the Bill.

### Clause 18  Meaning of integrity

Clause 18 will provide for the meaning of the term integrity, which will be defined by clause 12 of the Bill to have the meaning given by clause 18.

Clause 18 will provide that the **integrity** of goods is ensured if the identity or composition of the goods, in relation to any condition, restriction or other description that applies in relation to the goods is:

- ascertainable; and
- maintained without loss, addition or substitution; and
- not confused with that of any other goods.

Ensuring the integrity of goods that are exported is a key object of the Bill as set out in clause 3 of the Bill and will be a fundamental concept in relation to the regulation of exports.

### Clause 19  Meaning of occupier

Clause 19 will provide the meaning of the term ‘occupier’, which will be defined by clause 12 of the Bill to have the meaning given by clause 19.

Clause 19 will provide that **occupier** has two meanings depending on whether it will be for a registered establishment or an establishment other than a registered establishment (which includes premises and properties).

Subclause 19(1) will provide that the occupier of a registered establishment is the person in whose name the establishment is registered.

Subclause 19(2) will provide that an occupier of an establishment (other than a registered establishment) where export operations in relation to goods are, were or will be carried out, is the person that:

- operates, operated or will operate the business of carrying out export operations in relation to goods at the establishment; or
- manages or controls, managed or controlled or will manage or control export operations carried out in relation to goods at the establishment.
The term establishment will include premises and properties and the term occupier will include the manager of any premises or property, as well as an establishment. Therefore, the term occupier as it will be defined in subclause 19(2) will include the manager of an accredited property.

Division 2 – Other interpretation provisions

Clause 20 When goods are exported

Subclause 20(1) will provide that goods are exported when the conveyance transporting the goods from Australian territory commences its journey to a place outside Australian territory (whether or not that place is the intended final overseas destination for the goods).

A note to subclause 20(1) will clarify that if goods are transported between landing places or ports in Australian territory, the goods are exported when the conveyance transporting the goods commences its journey from the last landing place or port in Australian territory before leaving Australian territory.

Subclause 20(2) will be an avoidance of doubt provision which will provide that subclause 20(1) will apply if:

- goods were taken from waters (other than internal waters) in Australian territory, were harvested on the continental shelf adjacent to Australia or were harvested in an area on the continental shelf adjacent to an external Territory to which the Bill is extended under subparagraph 8(2)(b)(ii) of the Bill; and
- after being taken or harvested, the goods:
  - were loaded onto a conveyance in Australian territory for transportation to a place outside Australian territory; or
  - were taken to a place outside Australian territory; and
- the goods were not unloaded at any time at a place on land in Australian territory. For example, the transhipment of fish taken in the waters of the Australian territory will come within the concept of when goods are exported.

Clause 21 Persons who manage or control export operations

Clause 21 will clarify that, for the purposes of the Bill, a person is taken to be a person who manages or controls, or would manage or control, export operations if the person has, or would have the authority to either direct the export operations, or an important or substantial part of the export operations; or direct another person who has, or would have, authority to direct export operations.

The person who manages or controls export operations has certain obligations relevant to numerous chapters in the Bill, including, Chapter 3 of the Bill which deals with accredited properties, Chapter 4 of the Bill which deals with registered establishments, Chapter 5 of the Bill which deals with approved arrangements and Chapter 6 of the Bill which deals with export licences.
Chapter 2—Exporting goods

PART 1—GOODS

Division 1—Introduction

Clause 22 Simplified outline of this Part

Clause 22 will provide a simplified outline of Part 1 of Chapter 2 of the Bill. Part 1 of Chapter 2 will provide that certain goods will be prohibited absolutely from being exported from Australian territory. These goods will be called permanently prohibited goods.

Part 1 of Chapter 2 will provide that the Minister may, by legislative instrument, determine that the export of a particular kind of goods from Australian territory, or from a part of Australian territory, is prohibited absolutely for a specified period of up to six months; or that the export of a specified kind of goods from Australian territory, or from a part of Australian territory, to a specified place is prohibited for a specified period of up to six months. The legislative instrument will be called a temporary prohibition determination.

The Minister may only make a temporary prohibition determination if the Minister is satisfied that the determination will be necessary to protect human, animal or plant life or health, or to secure compliance with an Australian law (other than the Bill). In addition, a temporary prohibition determination may be varied to extend the temporary prohibition period for further periods of up to six months.

Part 1 of Chapter 2 will also provide that rules made under clause 432 of the Bill may prescribe kinds of goods (prescribed goods) for the purposes of the Bill. In deciding whether to prescribe goods that are not animals, plants or food, the Secretary may have regard to relevant matters, including importing country requirements, sanitary matters, Australian laws and standards, Australia’s international rights and obligations, and international standards.

Part 1 of Chapter 2 will also enable the rules to prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, unless conditions prescribed by the rules are complied with; or prohibit the export of prescribed goods from Australian territory, or from a part of Australian territory, to a specified place unless conditions prescribed by the rules are complied with.

In addition, a person may commit an offence or be liable to a civil penalty if permanently prohibited goods, or goods in relation to which a temporary prohibition determination applies, are exported, and are intended to be imported into a particular place, and the export of the goods to that place is temporarily prohibited.

A person may also commit an offence or be liable to a civil penalty if goods are exported in contravention of prescribed export conditions, or the person makes a false or misleading representation about goods that are entered for export.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 1 of Chapter 2 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
Division 2—Prohibited goods

Subdivision A—Permanently prohibited goods

Clause 23  Goods that are prohibited from export absolutely

Clause 23 will enable the Bill to prohibit absolutely the export of goods from Australian territory.

Clause 23 will provide that the export of split vetch (being split seed of *Vivia sativa*) from Australian territory is prohibited permanently and absolutely. Split vetch seeds are a particular form of vetch seeds and are not the same as whole vetch seeds that have been broken (for example, in the course of harvesting or transport). The requirement to prohibit absolutely the export of split vetch seeds results from its toxic properties and possible use as a substitute for edible red lentils. Goods prohibited from export under clause 23 will be defined as permanently prohibited goods in clause 12 of the Bill.

Clause 23 will only apply to a single commodity—split vetch. If there is a need to permanently prohibit other goods from export in the future, the prohibition will need to be subject to consideration, and passage of, an amendment Bill by Parliament, rather than a responsibility delegated to the Minister or Secretary. A permanent prohibition on the export of a good may be required if, for example, those goods pose a significant and ongoing risk to human, animal or plant life or health that cannot be appropriately managed by a temporary prohibition provided for in Subdivision B of Division 2 of Part 1 of Chapter 2 of the Bill or other regulatory controls set out in the Bill.

Two notes will be included at the end of clause 23. Note 1 will refer the reader to clause 14 of the Bill for the meaning of *Australian territory*. Note 2 will advise the reader that Division 4 of Part 1 of Chapter 2 of the Bill will set out offences and civil penalty provisions for exporting permanently prohibited goods.

Clause 30 of the Bill will provide an offence or make a person liable to a civil penalty if a person exports goods that are totally prohibited from being exported (either temporarily or permanently). Clause 31 of the Bill will provide an aggravated offence or make a person liable to a civil penalty if the person exports goods that are subject to absolute prohibition on export (either temporarily or permanently) with the intention of obtaining a commercial advantage. Clause 32 of the Bill will make it an aggravated offence or make a person liable to a civil penalty if the person exports goods that are subject to absolute prohibition (either temporarily or permanently) and there will be economic consequences for Australia (as defined in clause 12 of the Bill).

Subdivision B—Temporarily prohibited goods

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

Clause 24 will enable the Minister to temporarily prohibit the export of goods from Australian territory.

Subclause 24(1) will provide that the Minister may determine, by legislative instrument, that certain kinds of goods are temporarily prohibited from export from all or part of Australian territory for a specified period of up to six months. The temporary prohibition determination
will either prohibit the export of goods absolutely (that is, the goods will not be able to be exported to any place) (see paragraph 24(1)(a)), or prohibit the export of goods to a specified place (see paragraph 24(1)(b)).

The temporary prohibition determination will be a legislative instrument and therefore will be subject to Parliamentary scrutiny though the disallowance process, and to sunsetting in accordance with the Legislation Act.

Three notes will be included at the end of subclause 24(1). Note 1 will provide that a determination in force under paragraphs 24(1)(a) or 24(1)(b) will be called a temporary prohibition determination. Note 2 will advise the reader that the temporary prohibition period may be extended under clause 25 of the Bill. Note 3 will refer the reader to clause 14 of the Bill for the meaning of Australian territory.

Subclause 24(2) will provide that the Minister may only make a temporary prohibition determination under subclause 24(1) if the Minister is satisfied that it will be necessary to protect human, animal or plant life or health, or to secure compliance with an Australian law (other than the Bill). The Minister will only have discretion to make a temporary prohibition determination when it will be necessary to achieve the outcomes set out in subclause 24(2). This will be an important limitation on the power of the Minister to temporarily prohibit the export of goods and recognises that only in the serious circumstances that will be listed in subclause 24(2) should it be possible to make a temporary prohibition determination.

Subclause 24(3) will require that a determination made under subclause 24(1) must set out the reasons for making the determination. This will enable the Parliament and exporters to understand the basis of, and reasons for, the temporary prohibition determination.

A note will be included at the end of subclause 24(3), which will advise the reader that Division 4 of Part 1 of Chapter 2 of the Bill will set out offences and civil penalty provisions for exporting goods in relation to which a temporary prohibition determination will apply.

Clause 34 of the Bill will provide an offence or make a person liable to a civil penalty if a person exports goods that are totally prohibited from being exported (either temporarily or permanently). Clause 35 of the Bill will provide an aggravated offence or make a person liable to a civil penalty if the person exports goods that are subject to absolute prohibition on export (either temporarily or permanently) with the intention of obtaining a commercial advantage. Clause 36 of the Bill will make it an aggravated offence or make a person liable to a civil penalty if the person exports goods that are subject to absolute prohibition (either temporarily or permanently) and there will be economic consequences for Australia.

**Clause 25 Variation of temporary prohibition determination**

Subclause 25(1) will enable the Minister to vary a temporary prohibition determination to extend the period of prohibition on export specified in the original temporary prohibition determination for a further period of up to six months. The ability to vary the period of the temporary prohibition determination for six months only is designed to ensure that the reasons for the temporary prohibition period are constantly reviewed and that the prohibition will not be left in place for longer than is necessary.

As with the original temporary prohibition determination, subclause 25(2) will provide that the Minister may only vary a temporary prohibition determination under subclause 25(1) if
the Minister is satisfied that it will be necessary to protect human, animal or plant life or health, or secure compliance with an Australian law (other than the Bill). This will mean that the Minister may only vary the temporary prohibition determination when it is necessary to achieve these outcomes, and not for any other purpose. This will be an important limitation on the power of the Minister and recognises that a temporary prohibition determination should only be varied in serious circumstances.

A variation to a temporary prohibition determination will be a legislative instrument and therefore will be subject to Parliamentary scrutiny though the disallowance process, and to sunsetting in accordance with the Legislation Act.

Subclause 25(3) will confirm that the Minister may vary a temporary prohibition determination made under subclause 25(1) more than once. This will enable the Minister to respond to ongoing concerns that will have necessitated the issue of the temporary prohibition determination in the first place. It will ensure that those concerns are addressed before the temporary prohibition determination is removed. Alternatively, where it is considered the prohibition should be permanent, the Minister will be able to extend the prohibition and ensure it remains in place until an amendment Bill can be considered by Parliament.

Subclause 25(4) will require that a determination varying a temporary prohibition determination must set out the reasons for making the variation. This will enable Parliament and exporters to understand why the variation is being made.

Subclause 25(5) will make it clear that this clause does not otherwise limit the application of subsection 33(3) of the Acts Interpretation Act in relation to a temporary prohibition determination. This will mean that the Minister will be able to repeal, rescind, revoke or amend the determination in addition to being able to vary the determination. However, as with any variation, any repeal, rescission, revocation or amendment may only be made if it will be necessary to protect human, animal or plant life or health, or secure compliance with an Australian law (other than the Bill).

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

**Effect on government certificate**

Subclause 26(1) will provide that, when a temporary prohibition determination prohibits the export of a kind of goods under clause 24 of the Bill, any government certificate that has been, or is, issued in relation to those goods will be taken to have been revoked.

The revocation of a government certificate will apply in relation to goods that are to be exported, as well as goods that have already been exported. A government certificate will be taken to have been revoked on the date the temporary prohibition determination takes effect or the date immediately after the certificate will be issued, whichever is the later.

Subclause 26(1) will ensure that government certificates will not be used to facilitate the import of goods when the export of those goods is prohibited under a temporary prohibition determination. This will apply in relation to goods that have already been exported (but which have not yet been imported) and goods that have yet to be exported. Once a temporary prohibition determination has been issued, the export (and import) of those goods must cease.
Effect on export permit

Subclause 26(2) will provide that, when a temporary prohibition determination prohibits the export of a kind of goods under clause 24 of the Bill, any export permit that has been, or is, issued in relation to those goods will be taken to have been revoked.

An export permit that relates to goods before the goods are exported will automatically be revoked to prevent the goods leaving Australia territory after a temporary prohibition determination is made. Once the goods have left Australian territory the issue of a temporary prohibition determination cannot alter this fact. Revoking a permit in these circumstances would have no effect.

An export permit will be taken to have been revoked on the date the temporary prohibition determination takes effect or immediately after the export permit is issued, whichever is the later. This will ensure that export permits will not be used to facilitate the export of goods when the export is prohibited under the temporary prohibition determination.

Clause 27 Temporary prohibition determination prevails over inconsistent rules

Clause 27 will provide that a temporary prohibition determination made under clause 24 of the Bill will prevail over the rules made under clause 432 of the Bill, to the extent of any inconsistency. This is intended to ensure that the temporary prohibition determination will have the intended outcome of preventing the export of goods, which might otherwise be permitted under the Bill, in order to protect human, animal or plant life or health or to secure compliance with an Australian law (other than the Bill).

Division 3 – Prescribed goods and conditions of export

Clause 28 Rules may prescribe goods for the purposes of this Act

Clause 28 will operate in conjunction with clause 29 of the Bill and will be a key provision used to regulate the export of goods from Australian territory.

Subclause 28(1) will provide that rules made under clause 432 of the Bill will be able to prescribe kinds of goods (prescribed goods) for the purposes of the Bill. What the rules will be able to prescribe as prescribed goods will depend on whether the item will be covered by the definition of goods. This term ‘goods’ will be defined in clause 12 of the Bill as follows:

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

but does not include narcotic goods within the meaning of the Customs Act 1901.

Animal, plant and food will also be defined in clause 12 of the Bill. The definitions of animal, plant and food are intended to be broad enough to ensure that the export of all kinds of animals, plant and food may be regulated under the Bill without the Secretary having to consider whether goods of that kind should be regulated as prescribed goods.
The rules made under clause 432 of the Bill may therefore prescribe any of these kinds of goods to be prescribed goods and therefore they will be subject to the regulatory controls that will be set out in the Bill.

Subclause 28(2) will provide that rules made under subclause 28(1) may prescribe a kind of goods by reference to particular circumstances, including, for example, the place to which the goods are, or are intended to be, exported and the intended use of the goods. Enabling the rules to set out which goods will be prescribed goods will give the Secretary the flexibility to increase or decrease the level of regulation of goods as required, such as in response to changes in industry and market requirements, and to regulate the export of goods only when there is a need to do so.

For example, certain goods, such as raw meat, may present a health risk to consumers if they are not prepared in a particular way. The Secretary will be able to make rules to prescribe such goods so their preparation could be regulated to ensure they were fit for consumption and safe to be exported. Where there is no identifiable risk and no importing country requirements, there may be no need to make the goods prescribed goods. Goods of a kind that are not prescribed goods are defined as non-prescribed goods in clause 12 of the Bill.

Subclause 28(3) will provide that in deciding whether to prescribe a kind of goods referred to in paragraph (d) of the definition of goods in clause 12 (that is, any other article, substance or thing) as a prescribed goods, the Secretary may have regard to the following matters:

- any importing country requirements relating to goods of that kind;
- sanitary matters (being matters relating to food safety, animal health or human health) and phytosanitary matters (being matters relating to plant health) relating to goods of that kind;
- any Australian laws and standards relating to goods of that kind;
- Australia’s rights and obligations relating to goods of that kind under any international agreements to which Australia is a party;
- any international standards relating to goods of that kind;
- any other matter the Secretary considers relevant.

The effect of subclause 28(3) will be that the Secretary will have the discretion to prescribe any other article, substance or thing as a prescribed good, taking into account the matters that will be set out in subclause 28(3). This will enable the Secretary to bring any other article, substance or thing within the regulatory controls that will be set out in the Bill but only when it is necessary and appropriate to do so.

Subclause 28(4) will provide that the rules made under clause 432 of the Bill may provide that a kind of prescribed goods will be taken not to be prescribed goods for the purposes of the Bill, in the circumstances provided by the rules. That is, they will be treated as non-prescribed goods for the purposes of the Bill.

Enabling the rules to set out the circumstances in which prescribed goods will be taken to be non-prescribed goods, and hence not subject to the regulatory controls that apply to prescribed goods in the Bill, will give the Secretary flexibility to exclude what would otherwise be prescribed goods from the regulatory controls. This will only be in situations where it is appropriate to do so, for example, where there are no importing country requirements or there is no requirement to regulate the export of the goods, for example, because of the size or weight of the consignment. Enabling the rules to set out when prescribed goods may be taken
not to be prescribed goods differs from exemptions in that it will be done on an on-going basis in relation to all goods that fit within the relevant description and not on a case-by-case basis for a limited time.

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

Clause 28 of the Bill will operate in conjunction with clause 29 and will allow the rules made under clause 432 of the Bill to prohibit the export of prescribed goods unless they comply with certain conditions. Clauses 28 and 29 will be key provisions to regulating the export of prescribed goods from Australian territory.

Subclause 29(1) will enable the Secretary to make rules under clause 432 of the Bill to:

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

The conditions prescribed by the rules will be known as prescribed export conditions (which will be defined in clause 12 of the Bill as meaning conditions prescribed by rules made under clause 432 of the Bill for the purposes of clause 29).

Enabling the rules to set out the conditions in relation to the export of prescribed goods, or the export of prescribed goods to a particular place, will give the Secretary the flexibility to regulate the export of goods to suit the requirements of the particular commodity or importing country requirements. Subclause 29(2) will provide examples of the types of matters that may be prescribed as conditions (that is, prescribed export conditions) in the rules (see below).

Four notes will be included at the end of subclause 29(1). Note 1 will provide that the rules will be made by the Secretary under clause 432 of the Bill. The note will provide that the rules will be disallowable legislative instruments and will be subject to sunsetting under the Legislation Act.

Note 2 will direct the reader to subclause 289(1) of the Bill, which will provide that the Minister will be able to give directions to the Secretary in relation to the performance of the Secretary’s functions or the exercise of the Secretary’s powers in making rules under clause 432 of the Bill. The direction by the Minister will be a legislative instrument. This will mean that the direction will be subject to tabling in Parliament; however, section 42 of the Legislation Act relating to disallowance of legislative instruments and Part 4 of Chapter 3 of that Act (relating to sunsetting) will not apply to the direction.

Note 3 will direct the reader to clause 14 of the Bill, which will provide the meaning of Australian territory. Note 4 will provide that Division 4 of Part 1 of Chapter 2 of the Bill will set out a number of offences and civil penalty provisions for exporting prescribed goods in contravention of prescribed export conditions.

Subclause 29(2) will provide examples of the kinds of prescribed export conditions that the rules, made under clause 432 of the Bill for the purposes of subclause 29(1), may prescribe. These will be conditions that:
require export operations to be carried out in relation to the goods at an accredited property; or at a registered establishment; or at another kind of premises prescribed by the rules; or in accordance with an approved arrangement; or in accordance with an export licence; or in any other way prescribed by the rules; or

require the exporter to hold one or more of the following: an approved arrangement covering the goods; a government certificate in relation to the goods; an export licence covering the goods; an export permit for the goods; another kind of permission, consent or approval, granted as prescribed by the rules, to export the goods; or

relate to export operations to be carried out in relation to the goods, including in relation to the following matters: premises, equipment and facilities to be used to produce or prepare the goods; hygiene; loading and transport of the goods; identification, tracing, recall and transfer of the goods; ensuring the integrity of the goods; trade descriptions; and official marks.

Enabling the rules to identify other matters that may form the subject of prescribed export conditions will give the Secretary flexibility to respond to changes in Government and international requirements for the regulation of the export of prescribed goods. The rules made under clause 432 of the Bill may prohibit the export of prescribed goods generally (that is, a kind of prescribed goods may be prohibited from export to all places), or to a specified place, unless conditions (including conditions that relate to the matters that will be listed in subclause 29(2)) are complied with.

Subclause 29(4) will provide a further example of what rules made under clause 432 of the Bill for the purposes of subclause 29(1) may address. The rules may prescribe conditions in respect of matters or things not related to the prescribed goods themselves, which are required to be complied with. Subclause 29(3) will make it clear that the conditions that may be imposed need not relate directly to the goods, but could relate to matters that have an indirect link to the export of goods such as conditions in relation to premises or transport.

The effect of the definition of the point at which goods are exported under clause 20 of the Bill is that the prescribed export conditions imposed under clause 29 can only deal with matters leading up to and including the point that goods are exported. Prescribed export conditions can be distinguished from conditions that may be prescribed under other chapters of the Bill, including conditions on accredited properties (clause 78), registered establishments (clause 111), approved arrangements (clause 150), export licences (clause 190) and export permits (clause 227). For example, it may be a prescribed export condition on the export of goods that an exporter hold an approved arrangement. This means that the export of the goods would be prohibited unless the exporter holds an approved arrangement. Rules made for the purpose of clause 78 could also prescribe certain conditions on that arrangement dealing with how the exporter will conduct their export operations after the goods are exported (for example, by specifying which abattoirs to which the exporter may send livestock, or the transportation arrangements that must be in place). Such conditions on approved arrangements would be subject to the offence provisions in clause 184 of the Bill, as opposed to the offence provisions in Division 4 of Part 1 of Chapter 2 of the Bill which only apply to prescribed export conditions.

Subclause 29(4) will clarify that rules made under clause 29 may make provision for a matter by applying, adopting or incorporating any matter in a list prepared by the Secretary and published on the Department’s website, as in force or existing from time to time. Subclause 29(4) will apply despite subsection 14(2) of the Legislation Act.
Subsection 14(2) of the Legislation Act provides that, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time and will need to commence at short notice.

Subclause 29(4) will enable a list prepared by the Secretary and published on the Department’s website to be incorporated into the regulatory framework. A list of this nature may be a necessary part of the regulatory framework if, for example, importing country requirements in relation to a particular kind of goods is required to be updated regularly. This will provide flexibility while also providing certainty and facilitating trade. The power in subclause 29(4) will be specific to lists prepared by the Secretary under rules made for the purposes of clause 29.

A note will be included under subclause 29(4) to assist the reader, providing the address of the Department’s website (http://www.agriculture.gov.au).

Division 4—Offences and civil penalty provisions

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

Clause 30 will provide that penalties may be imposed in circumstances where goods are subject to an absolute prohibition on export (see clause 23 of the Bill) and the goods are exported in contravention of that prohibition. Clause 31 of the Bill will provide that penalties may be imposed for the same conduct but in the aggravated circumstances where the person intends to obtain a commercial advantage. Clause 32 of the Bill will provide that penalties may be imposed for the same conduct but in the aggravated circumstances where the export has economic consequences for Australia.

Subclause 30(1) will provide that a person will contravene subclause 30(1) if:

- the person exports goods; and
- either:
  - the goods are permanently prohibited goods; or
  - the export of the goods is prohibited absolutely by a temporary prohibition determination.

A note will be included at the end of subclause 30(1) that will provide that the physical elements of an offence against subclause 30(2) will be set out in subclause 30(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 30(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 30(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 30(2) will be 2,400 penalty units.

Subclause 30(3) will provide that strict liability will apply to the elements of the offence in paragraph 30(1)(b) (that the goods are permanently prohibited goods, or that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical
elements in paragraph 30(1)(b) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraph 30(1)(b) are matters of law. They concern the existence of a permanent or temporary absolute prohibition on the export of the goods. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 30(1)(b) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 30(1)(a)).

Subclause 30(4) will provide that a person will be liable to a civil penalty of 960 penalty units if the person contravenes subclause 30(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 30(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 30(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 30(4) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty will also reflect the consequences that exporting goods that are prohibited (whether permanently or temporarily) may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). Conduct that contravenes the prohibition may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances. This will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 31 will provide that penalties may be imposed in circumstances where goods are subject to an absolute prohibition and the goods are exported in contravention of that
prohibition, in circumstances where the exporter intends to obtain a commercial advantage over competitors, or potential competitors, as a result of exporting the goods.

This offence is similar to the basic offence that will be prescribed in clause 30 of the Bill. However, clause 31 will create an aggravated offence where the contravention involves the person intending to obtain a commercial advantage.

Subclause 31(1) will provide that a person will contravene subclause 31(1) if:

- the person exports goods; and
- either:
  - the goods are permanently prohibited goods; or
  - the export of the goods is prohibited absolutely by a temporary prohibition determination; and
- the person intends to gain a commercial advantage in the market by exporting the goods.

A note will be included at the end of subclause 31(1) that will provide that the physical elements of an offence against subclause 31(2) will be set out in subclause 31(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

The offence in clause 31 is intended to capture circumstances where a person exports goods that are either permanently prohibited from being exported or prohibited absolutely by a temporary prohibition determination. In both cases, the offence provides that this conduct is for the purpose of obtaining a commercial advantage, whether or not a commercial advantage is realised. Commercial advantage may include monetary profit or private financial gain. There will be no requirement to prove that the person actually obtained a commercial advantage; proving that, at the time of exporting the goods the person intended to obtain a commercial advantage will be sufficient.

Subclause 31(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 31(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate for a contravention of subclause 31(2) will be determined according to the formula at clause 50A.

Subclause 31(3) will provide that strict liability will apply to the elements of the offence in paragraph 31(1)(b) (that the goods are permanently prohibited goods, or that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical elements in paragraph 31(1)(b) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraph 31(1)(b) are matters of law. They concern the existence of a permanent or temporary absolute prohibition on the export of the goods. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these
elements strict liability builds on section 9.4 of the *Criminal Code* to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 31(1)(b) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 31(1)(a)), and that the person intended to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods (paragraph 31(1)(c)).

Subclause 31(4) will provide for an alternative verdict for conduct that contravenes subclause 31(2). If the prosecution is unable to prove beyond reasonable doubt that the person intended to obtain a commercial advantage over competitors or potential competitors by exporting the goods, the person may still be found guilty of an offence, under subclause 30(2) of the Bill, of exporting goods when those goods are subject to an absolute prohibition on export.

Subclause 31(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 31(1). This is twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 31(5). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 31(5) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the seriousness of the decision to absolutely prohibit goods from export (whether permanently or temporarily) and the potential consequences that exporting such goods may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). For example, goods may be prohibited from export absolutely to prevent or control the spread of a disease or pest to overseas markets. The export of these goods may severely damage Australia’s trading reputation. A person intending to obtain a commercial advantage is an aggravated circumstance that warrants the additional penalty because of the added monetary benefit that may be gained by the person involved in this conduct. Reliance on the basic offence under clause 30 may be insufficient to eliminate dishonest trade in circumstances where there may be a high financial reward.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances. This will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 32 will provide that penalties may be imposed in circumstances where goods are subject to an absolute prohibition and the goods are exported in contravention of that
prohibition, and the export of goods has, or has the potential to have, economic consequences for Australia.

This offence is similar to the basic offence that will be prescribed in clause 30. However, clause 32 will create an aggravated offence and has the additional element that the contravention involves economic consequences for Australia.

Subclause 32(1) will provide that a person will contravene subclause 32(1) if:
  - the person exports goods; and
  - either:
    - the goods are permanently prohibited goods; or
    - the export of the goods is prohibited absolutely by a temporary prohibition determination; and
  - the export of the goods causes, or could cause, economic consequences for Australia.

The term economic consequences for Australia will be defined in clause 12 of the Bill and will include the following:
  - substantial damage to Australia’s trading reputation;
  - a restriction on, or the closure of, access to one or more overseas markets for all goods or a kind of goods from Australia.

A note will be included at the end of subclause 32(1) that will provide that the physical elements of an offence against subclause 32(2) will be set out in subclause 32(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

The offence in clause 32 is intended to capture circumstances where a person exports goods that are either permanently prohibited from being exported or prohibited absolutely by a temporary prohibition determination. In both cases, the offence provides that this conduct will occur with the aggravated circumstances that the export of the goods causes, or has the potential to cause, economic consequences for Australia.

Subclause 32(2) will provide that a person will commit a fault-based offence if the person contraveses subclause 32(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 32(3) will provide that strict liability will apply to the elements of the offence in paragraph 32(1)(b) (that the goods are permanently prohibited goods, or that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical elements in paragraph 32(1)(b) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraph 32(1)(b) are matters of law. They concern the existence of a permanent or temporary absolute prohibition on the export of the goods. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the
prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 32(1)(b) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 32(1)(a)), and that the person was reckless as to whether the export of the goods would cause, or had the potential to cause, economic consequences for Australia (paragraph 32(1)(c)).

Subclause 32(4) will provide for an alternative verdict against subclause 32(2). If the prosecution is unable to prove beyond reasonable doubt that the export of the goods has had, or has the potential to have, economic consequences for Australia, the person may still be found guilty of an offence under subclause 30(2) of the Bill of exporting goods when those goods are subject to an absolute prohibition on export.

Subclause 32(5) will provide that a person will be liable to a civil penalty of 4,000 penalty units if the person contravenes subclause 32(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 32(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 32(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the seriousness of the decision to absolutely prohibit goods from export and the potential consequences that exporting such goods may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). The export of absolutely prohibited goods may pose significant risk to Australia’s trading reputation. The economic costs of reputational damage to one or more export industries may be far greater than even the maximum penalties imposed by the Bill. Causing economic consequences for Australia is an aggravated circumstance that warrants the additional penalty due to the risk of negative impact on the export industry and the Australian public.

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

Clause 33 will provide that penalties may be imposed in circumstances where a person conveys or possesses goods that are prohibited from being exported (either permanently or temporarily) when the person intends to export the goods or knows that the goods are intended to be exported.
**Person intends to export goods**

Subclause 33(1) will provide that a person will contravene subclause 33(1) if:

- the person conveys or possesses goods; and
- the person intends to export those goods; and
- either:
  - the goods are permanently prohibited goods; or
  - the export of the goods is prohibited absolutely by a temporary prohibition determination.

A note will be included at the end of subclause 33(1) that will provide that the physical elements of an offence against subclause 33(2) will be set out in subclause 33(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 33(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 33(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 31(2) will be 2,400 penalty units.

Subclause 33(3) will provide that strict liability will apply to the element of the offence in paragraph 33(1)(c) (that the goods are permanently prohibited goods, or that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 33(1)(c) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 33(1)(c) is a matter of law. It concerns the existence of a permanent or temporary absolute prohibition on the export of the goods. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 33(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to convey the goods or have them in the person’s possession (paragraph 33(1)(a)), and that the person intended to export the goods (paragraph 33(1)(b)).

Subclause 33(4) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 33(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 33(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 33(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.
The civil penalty provided for in subclause 33(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing goods that the person intends to export and that are subject to absolute prohibition on that export. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances. This will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

*Person knows that goods are intended to be exported*

Subclause 33(5) will provide that a person will contravene 33(5) if:

- the person conveys or possesses goods; and
- the person is aware that the goods are intended for export; and
- either:
  - the goods are permanently prohibited goods; or
  - the export of the goods is prohibited absolutely by a temporary prohibition determination.

A note will be included at the end of subclause 33(5) that will provide that the physical elements of an offence against subclause 33(5) will be set out in subclause 33(4). The note will refer the reader to clause 370 which will provide further explanation of the operation of the physical elements of the offence.

Subclause 33(6) will provide that a person will commit a fault-based offence if the person contravenes subclause 33(5). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 33(5) will be 2,400 penalty units.

Subclause 33(7) will provide that strict liability will apply to the element of the offence in paragraph 33(5)(c) (that the goods are permanently prohibited goods, or that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 33(5)(c) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*).

The element of the offence in paragraph 33(5)(c) is a matter of law. It concerns the existence of a permanent or temporary absolute prohibition on the export of the goods. It is appropriate
for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 33(5)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to convey the goods or have them in the person’s possession (paragraph 33(5)(a)), and that the person knew that the goods were intended to be exported (paragraph 33(5)(b)).

Subclause 33(8) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 33(5). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 33(5). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 33(8) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 33(8) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing goods that the person knows are intended to be exported and that are subject to absolute prohibition on that export. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances. This will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 34 will provide that penalties may be imposed in circumstances where a person exports goods with the intention that they will be imported into a place (irrespective of when that intention is formed) and the export of goods to that place is prohibited by a temporary prohibition determination. Clause 35 of the Bill will provide that penalties may be imposed for the same conduct but in the aggravated circumstances where the person intends to obtain a commercial advantage. Clause 36 of the Bill will provide that penalties may be imposed for the same conduct but in the aggravated circumstances where the export has economic consequences for Australia.
Subclause 34(1) will provide that a person will contravene subclause 34(1) if:

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

The offence in clause 34 will apply when the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time) and there is a prohibition in place for exporting goods to that place. The temporary prohibition determination must be in place at the time the person develops the intention to import the goods to a particular place for the offence to apply. This is intended to capture a person who exported goods from Australia and has the intention to transport those goods to the prohibited place.

A note will be included at the end of subclause 34(1) that will provide that the physical elements of an offence against subclause 34(2) are set out in subclause 34(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 34(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 34(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 34(2) will be 2,400 penalty units.

Subclause 34(3) will provide that strict liability will apply to the element of the offence in paragraph 34(1)(c) (that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 34(1)(c) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 34(1)(c) is a matter of law. It concerns the existence of a temporary absolute prohibition on the export of the goods. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 34(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 34(1)(a)), and that the person intended them to be imported into a particular place (irrespective of whether that intention existed at the time the goods were exported, or at a later point) (paragraph 34(1)(b)).

Subclause 34(4) will provide that a person will be liable to a civil penalty of 960 penalty units if the person contravenes subclause 34(1). This will be the maximum civil penalty that a
relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 34(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 34(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 34(4) will be twice as high as the penalty available for the criminal offence. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty also reflect the consequences that exporting goods to a temporarily prohibited place may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 35 will provide that penalties may be imposed in circumstances where goods are exported with the intention that they will be imported into a place that is prohibited by a temporary prohibition determination and, as a result, the exporter intends to obtain a commercial advantage over competitors, or potential competitors. This offence is similar to the basic offence that will be prescribed in clause 34 of the Bill. However, clause 35 will create an aggravated offence where the contravention involves the person intending to obtain a commercial advantage from the export.

Subclause 35(1) will provide that a person will contravene subclause 35(1) if:

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

The offence in clause 35 will apply when the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time) and there is a prohibition in place for exporting goods to that place. This is intended to capture a person who has exported goods from Australia and has the intention (whenever formed) to transport those goods to the prohibited place. The offence in clause 33
will apply where a person exports goods to a prohibited place for the purpose of obtaining a commercial advantage, whether or not a commercial advantage is realised. Commercial advantage may include monetary profit or private financial gain.

A note will be included at the end of subclause 35(1) that will provide that the physical elements of an offence against subclause 35(2) are set out in subclause 35(1). The note will refer the reader to clause 370 which will provide further explanation of the operation of the physical elements of the offence.

Subclause 35(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 35(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 35(3) will provide that strict liability will apply to the element of the offence in paragraph 35(1)(c) (that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 35(1)(c) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 35(1)(c) is a matter of law. It concerns the existence of a temporary absolute prohibition on the export of the goods. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 35(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 35(1)(a)), that the person intended them to be imported into a particular place (irrespective of whether that intention existed at the time the goods were exported, or at a later point) (paragraph 35(1)(b)), and that the person intended to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods (paragraph 35(1)(d)).

Subclause 35(4) will provide for an alternative verdict against subclause 35(2). If the prosecution is unable to prove beyond reasonable doubt that, as a result of exporting the goods to the temporarily prohibited place, the person intended to gain a commercial advantage over competitors or potential competitors, the person may still be found guilty of an offence under subclause 34(2) of the Bill of exporting goods to a place when those goods are subject to a temporary prohibition determination for that place.

Subclause 35(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 35(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 35(1). The maximum civil penalty that a
relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 35(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the seriousness of the decision to export goods to a prohibited place with the intention of obtaining an economic advantage. The export of temporarily prohibited goods may pose significant risk to Australia’s trading reputation and may adversely impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). The economic costs of reputational damage to a particular export industry may be far greater than even the maximum penalties imposed by the Bill.

A person intending to obtain a commercial advantage is an aggravated circumstance that warrants the additional penalty because of the added monetary benefit that can be gained by a person involved in this behaviour. Reliance on the basic offence under clause 34 of the Bill may be insufficient to eliminate dishonest trade in circumstances where there is a high financial reward.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 36 will provide that penalties may be imposed in circumstances where goods are exported with the intention that they will be imported into a place that is prohibited by a temporary prohibition determination and the exporting causes, or has the potential to cause, economic consequences for Australia. This offence is similar to the basic offence that will be prescribed in clause 34 of the Bill. However, clause 36 will create an aggravated offence where the contravention involves economic consequences for Australia.

Subclause 36(1) will provide that a person will contravene subclause 36(1) if:

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

The term *economic consequences for Australia* will be defined in clause 12 of the Bill and will include the following:

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

The offence in clause 36 will apply when the person exports goods and intends those goods to be imported into a temporarily prohibited place (whether that intention exists at the time the goods are exported or is formed after that time) and the export of the goods causes, or has the potential to cause, economic consequences for Australia. The clause will capture a person who has exported goods from Australia and has the intention (whenever formed) to transport those goods to the prohibited place.

A note will be included at the end of subclause 36(1) that will provide that the physical elements of an offence against subclause 36(2) are set out in subclause 36(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 36(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 36(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 36(3) will provide that strict liability will apply to the element of the offence in paragraph 36(1)(c) (that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 36(1)(c) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 36(1)(c) is a matter of law. It concerns the existence of a temporary absolute prohibition on the export of the goods. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 36(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 36(1)(a)), that the person intended them to be imported into a particular place (irrespective of whether that intention existed at the time the goods were exported, or at a later point) (paragraph 36(1)(b)), and that the person intended to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods (paragraph 36(1)(d)).

Subclause 36(4) will provide for an alternative verdict against subclause 36(2). If the prosecution is unable to prove beyond reasonable doubt that the export of the goods has had, or has the potential to have, economic consequences for Australia, the person may still be found guilty of an offence under subclause 34(2) of exporting goods to a place when those goods are subject to a temporary prohibition determination for that place.
Subclause 36(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 36(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 36(1). The maximum civil penalty that a relevant court will be able to order will be a body corporate to pay the Commonwealth for a contravention of subclause 36(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the seriousness consequence of exporting goods to a temporary prohibited place. Such conduct may pose a significant risk to Australia’s trading reputation and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). The economic costs of reputational damage to a particular export industry may be far greater than even the maximum penalties imposed by the Bill. Causing economic consequences for Australia is an aggravated circumstance that warrants the additional penalty due to the risk of negative impact on the export industry. Reliance on the basic offence under clause 34 of the Bill may be insufficient to eliminate dishonest trade in circumstances where there may be significant economic consequences for Australia.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 37 will provide that penalties may be imposed in circumstances where a person conveys or possesses goods that are intended to be exported to a temporarily prohibited place, or where the person knows that the goods are intended to be exported to a temporarily prohibited place.

Person intends to export goods to temporarily prohibited place

Subclause 37(1) will provide that a person will contravene subclause 37(1) if:

- a person conveys or possesses goods; and
- the person intends to export those goods; and
- the place to which the person intends to export the goods is prohibited by a temporary prohibition determination.

A note will be included at the end of subclause 37(1) that will provide that the physical elements of an offence against subclause 37(2) are set out in subclause 37(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 37(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 37(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 37(2) will be 2,400 penalty units.

Subclause 37(3) will provide that strict liability will apply to the element of the offence in paragraph 37(1)(c) (that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 37(1)(c) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 37(1)(c) is a matter of law. It concerns the existence of a temporary absolute prohibition on the export of the goods. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 37(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to convey the goods or have them in the person’s possession (paragraph 37(1)(a)), and that the person intended to export the goods to a particular place (paragraph 37(1)(b)).

Subclause 37(4) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 37(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 37(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 37(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 37(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing goods that are intended to be exported to a temporarily prohibited place and this conduct may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Subclause 37(5) will provide that a person will contravene subclause 37(5) if:

- a person conveys or possesses goods; and
- the person knows that those goods are intended to be exported to a particular place; and
- the place to which the person intends to export the goods is prohibited by a temporary prohibition determination.

A note will be included at the end of subclause 37(5) that will provide that the physical elements of an offence against subclause 37(6) are set out in subclause 37(5). The note will refer the reader to clause 370 of the Bill which will provide further explanation of the operation of the physical elements of the offence.

Subclause 37(6) will provide that a person will commit a fault-based offence if the person contravenes subclause 37(5). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 37(6) will be 2,400 penalty units.

Subclause 37(7) will provide that strict liability will apply to the element of the offence in paragraph 37(5)(c) (that the export of the goods is prohibited absolutely by a temporary prohibition determination issued under clause 24). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 37(5)(c) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*).

The element of the offence in paragraph 37(5)(c) is a matter of law. It concerns the existence of a temporary absolute prohibition on the export of the goods. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making this element strict liability builds on section 9.4 of the *Criminal Code* to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 37(5)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to convey the goods or have them in the person’s possession (paragraph 37(5)(a)), and that the person knew that the goods were intended to be exported to a particular place (paragraph 37(5)(b)).

Subclause 37(8) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 37(5). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 37(5). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 37(4) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.
The civil penalty provided for in subclause 37(8) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing goods that are intended to be exported to a temporarily prohibited place. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 38 will provide that penalties may be imposed in circumstances where a person exports prescribed goods and prescribed export conditions are contravened. Clause 39 of the Bill will provide a corresponding offence when there are aggravated circumstances of having an intention to obtain a commercial advantage and clause 40 of the Bill will provide a corresponding offence when there are aggravated circumstances of an economic consequence for Australia.

Subclause 38(1) will provide that a person will contravene subclause 38(1) if:

- the person exports goods; and
- the goods are prescribed goods; and
- the export of the goods is prohibited unless prescribed export conditions are complied with; and
- prescribed export conditions are not complied with.

A note will be included at the end of subclause 38(1) and will provide that the physical elements of an offence against subclause 38(2) will be set out in subclause 38(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 38(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 38(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 38(2) will be 2,400 penalty units.

Subclause 38(3) will provide that strict liability will apply to the elements of the offence in paragraphs 38(1)(b) (that the goods are prescribed goods), 38(1)(c) (that the export of the
goods is prohibited unless prescribed export conditions are complied with) and 38(1)(d) (that the prescribed export conditions were not complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 38(1)(b), (c) and (d) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 38(1)(b),(c) and (d) are matters of law. They concern how goods for export are regulated and the conditions that apply to their export. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 38(1)(b),(c) and (d) will not affect the need for the prosecution to prove fault element of the offence, namely that the person intended to export the goods (paragraph 38(1)(a)).

Subclause 38(4) will provide that a person will be liable to a civil penalty of 960 penalty units if the person contravenes subclause 38(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 38(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 38(1) will be 4,800 penalty units as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 38(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty will reflect the seriousness of exporting prescribed goods in contravention of a prescribed export condition. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.
Clause 39 Exporting prescribed goods—non-compliance with prescribed export conditions—intention to obtain commercial advantage

Clause 39 will provide that penalties may be imposed in circumstances where a person exports prescribed goods in contravention of prescribed export conditions, and the person intends to obtain a commercial advantage as a result of exporting those goods. This offence is similar to the basic offence that will be prescribed in clause 38 of the Bill. Clause 39 will create an aggravated offence and has the additional element that the contravention involves the person intending to obtain a commercial advantage.

Subclause 39(1) will provide that a person will contravene subclause 39(1) if:

- the person exports goods; and
- the goods are prescribed goods; and
- the export of the goods is prohibited unless prescribed export conditions are complied with; and
- the prescribed export conditions were not complied with; and
- the person intends to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods.

A note will be included at the end of subclause 39(1) which will provide that the physical elements of an offence against subclause 39(2) will be set out in subclause 39(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

This offence is intended to capture circumstances where a person exports prescribed goods in contravention of prescribed export conditions, with the intention of obtaining a commercial advantage, whether or not that commercial advantage is realised. Commercial advantage may include monetary profit or private financial gain.

Subclause 39(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 39(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both). The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 39(3) will provide that strict liability will apply to the elements of the offence in paragraphs 39(1)(b) (that the goods are prescribed goods), 39(1)(c) (that the export of the goods is prohibited unless prescribed export conditions are complied with) and 39(1)(d) (that the prescribed export conditions were not complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 39(1)(b), (c) and (d) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 39(1)(b),(c) and (d) are matters of law. They concern how goods for export are regulated and the conditions that apply to their export. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these
elements strict liability builds on section 9.4 of the *Criminal Code* to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 39(1)(b)(c) and (d) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 39(1)(a)), and that the person intended to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods (paragraph 39(1)(e)).

Subclause 39(4) will provide for an alternative verdict against subclause 39(2). If the prosecution is unable to prove beyond reasonable doubt that the person intended to obtain a commercial advantage over competitors or potential competitors by exporting the prescribed goods, the person may still be found guilty of an offence under subclause 38(2) of the Bill of exporting goods in contravention of prescribed export conditions.

Subclause 39(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 39(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 39(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 39(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the seriousness of the decision to prescribe export conditions and the serious consequences of exporting prescribed goods in contravention of prescribed export conditions, with the intention of obtaining a commercial advantage. For example, a prescribed export condition may be that the goods are prepared in accordance with an approved arrangement that will set out how the person will meet the requirements of the Bill and importing country requirements. The export of these goods in contravention with a prescribed export condition may severely damage Australia’s trading reputation and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). Obtaining a commercial advantage is an aggravated circumstance that warrants the additional penalty because of the added monetary benefit that may be gained by a person involved in this behaviour. Reliance on the basic offence under subclause 38(2) may be insufficient to eliminate dishonest trade in circumstances where there is a high financial reward.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.
Clause 40 Exporting prescribed goods—non-compliance with prescribed export conditions—economic consequences for Australia

Clause 40 will provide that penalties may be imposed in circumstances where a person exports prescribed goods in contravention of prescribed export conditions and the export of goods has, or has the potential to have, economic consequences for Australia. This offence is similar to the basic offence that will be prescribed in clause 38 of the Bill. However, clause 40 will create an aggravated offence where the contravention involves economic consequences for Australia.

Subclause 40(1) will provide that a person will contravene subclause 40(1) if:

- A person contravenes this subclause if:
  - the person exports goods; and
  - the goods are prescribed goods; and
  - the export of the goods is prohibited unless prescribed export conditions are complied with; and
  - prescribed export conditions were not complied with; and
  - the export of the goods causes, or has the potential to cause, economic consequences for Australia.

The term economic consequences for Australia will be defined in clause 12 of the Bill and will include the following:

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

A note will be included at the end of subclause 40(1) that will provide that the physical elements of an offence against subclause 40(2) will be set out in subclause 40(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 40(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 40(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 40(3) will provide that strict liability will apply to the elements of the offence in paragraphs 40(1)(b) (that the goods are prescribed goods), 40(1)(c) (that the export of the goods is prohibited unless prescribed export conditions are complied with) and 40(1)(d) (that the prescribed export conditions were not complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 40(1)(b), (c) and (d) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 40(1)(b), (c) and (d) are matters of law. They concern how goods for export are regulated and the conditions that apply to their export. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the
prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 40(1)(b), (c) and (d) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 40(1)(a)), and that the person was reckless as to whether the export of the goods would cause, or had the potential to cause, economic consequences for Australia (paragraph 40(1)(e)).

Subclause 40(4) will provide for an alternative verdict against subclause 40(2). If the prosecution is unable to prove beyond reasonable doubt that the export has the potential to have economic consequences for Australia, the person may still be found guilty of an offence under subclause 38(2) of the Bill of exporting goods in contravention of prescribed export conditions.

Subclause 40(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 40(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 40(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 40(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the serious consequences that may flow from exporting prescribed goods that do not comply with prescribed export conditions where the export of goods has, or has the potential to have, economic consequences for Australia. The export of goods that are subject to prescribed export conditions but which do not comply with those conditions may pose significant risk to Australia’s trading reputation and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). The economic costs of reputational damage to a particular export industry may be far greater than even the maximum penalties imposed by the Bill. Causing economic consequences or damage to Australia’s trading reputation will be an aggravated circumstance that warrants the additional penalty due to the risk of negative impact on the export industry and the Australian public.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.
Clause 41 Conveying or possessing prescribed goods that are intended to be exported in contravention of conditions etc.

Clause 41 will prescribe penalties for a person who conveys or possesses prescribed goods in circumstances where the person intends to export the goods, or the person knows that the goods are intended to be exported and the export of the goods is prohibited, unless prescribed export conditions are complied with.

Person intends to export goods in contravention of conditions

Subclause 41(1) will provide that a person will contravene subclause 41(1) if:

- the person conveys, or has in the person’s possession, goods; and
- the goods are prescribed goods; and
- the export of the goods is prohibited unless prescribed export conditions are complied with; and
- the person intends to export the goods and
- the export of the goods would contravene the prescribed export conditions.

A note will be included at the end of subclause 41(1) that will provide that the physical elements of an offence against subclause 41(2) will be set out in subclause 41(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 41(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 41(1). The fault-based will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 41(2) will be 2,400 penalty units.

Subclause 41(3) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 41(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 41(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 41(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 41(3) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing prescribed goods that the person intends to export in contravention of a prescribed export condition. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Subclause 41(4) will provide that a person will contravene subclause 41(4) if:

- the person conveys, or has in the person’s possession, goods; and
- the goods are prescribed goods; and
- the export of the goods is prohibited unless prescribed export conditions are complied with; and
- the person knows that the goods are intended to be exported and
- the export of the goods would contravene the prescribed export conditions.

A note will be included at the end of subclause 41(4) that will provide that the physical elements of an offence against subclause 41(5) will be set out in subclause 41(4). The note will refer the reader to clause 370 of the Bill which will provide further explanation of the operation of the physical elements of the offence.

Subclause 41(5) will provide that a person will commit a fault-based offence if the person contravenes subclause 41(5). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 41(4) will be 2,400 penalty units.

Subclause 41(6) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 41(4). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 41(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 41(4) will be 4,800 penalty units as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 41(6) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing prescribed goods that the person knows are intended to be exported in contravention of a prescribed export condition. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 42 will provide that penalties may be imposed in circumstances where a person exports prescribed goods with the intention that they will be imported into a place in contravention of prescribed export conditions. Clause 43 of the Bill will provide a corresponding offence when there are aggravated circumstances of having an intention to obtain a commercial advantage and clause 44 of the Bill will provide a corresponding offence when there are aggravated circumstances of an economic consequence for Australia.

Subclause 42(1) will provide that a person will contravene subclause 42(1) if:

- the person exports prescribed goods; and
- the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
- the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
- prescribed export conditions were not complied with.

The offence in clause 42 will apply where the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time) and there is a prohibition in place for exporting goods to that place unless prescribed export conditions have been complied with. This is intended to capture a person who has exported goods from Australia and has the intention (whenever formed) to transport those goods to the place in non-compliance of a prescribed export condition.

A note will be included at the end of subclause 42(1) that will provide that the physical elements of an offence against subclause 42(2) will be set out in subclause 42(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 42(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 42(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 42(2) will be 2,400 penalty units.

Subclause 42(3) will provide that strict liability will apply to the elements of the offence in paragraphs 42(1)(b) (that the goods are prescribed goods), 42(1)(d) (that the export of the goods to a place is prohibited unless prescribed export conditions are complied with) and 42(1)(e) (that the prescribed export conditions were not complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 42(1)(b),(d) and (e) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 42(1)(b), (d) and (e) are matters of law. They concern how goods for export to a particular place are regulated and the conditions that apply
to their export to that place. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the *Criminal Code* to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 42(1)(b)(d) and (e) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 42(1)(a)) and that the person intended them to be imported into a particular place (irrespective of whether that intention existed at the time the goods were exported, or at a later point) (paragraph 42(1)(c)).

Subclause 42(4) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 42(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 42(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 42(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the *Regulatory Powers Act* will apply.

The civil penalty provided for in subclause 42(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty will also reflect the seriousness of exporting prescribed goods to a particular place in contravention of a prescribed export condition. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 43 will provide that penalties may be imposed in circumstances where a person exports prescribed goods with the intention that they be imported into a particular place in contravention of prescribed export conditions, in circumstances where the person intends to obtain a commercial advantage over competitors or potential competitors. This offence is
similar to the basic offence that will be prescribed in clause 42 of the Bill. However, clause 43 of the Bill will create an aggravated offence where the contravention involves the person intending to obtain a commercial advantage.

Subclause 43(1) will provide that a person will contravene subclause 43(1) if:

- the person exports goods; and
- the goods are prescribed goods; and
- the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
- the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
- prescribed export conditions are not complied with; and
- the person intends to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods to that place.

The offence in clause 43 will apply where the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time) and there is a prohibition in place for exporting goods to that place unless prescribed export conditions have been complied with. This is intended to capture a person who has exported goods from Australia and has the intention (whenever formed) to transport those goods to the place in non-compliance of a prescribed export condition. The offence in clause 41 will capture circumstances where a person exports prescribed goods to a particular place in contravention of prescribed export conditions, for the purpose of obtaining a commercial advantage, whether or not a commercial advantage is realised. Commercial advantage may include monetary profit or private financial gain. There will be no requirement to prove that the person actually obtained a commercial advantage; proving that, at the time of exporting the goods, the person intended to obtain a commercial advantage will be sufficient.

A note will be included at the end of subclause 43(1) that will provide that the physical elements of an offence against subclause 43(2) will be set out in subclause 43(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 43(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 43(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 43(3) will provide that strict liability will apply to the elements of the offence in paragraphs 43(1)(b) (that the goods are prescribed goods) 43(1)(d) (that the export of the goods to a place is prohibited unless prescribed export conditions are complied with) and 43(1)(e) (that the prescribed export conditions were not complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 43(1)(b), (d) and (e) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 43(1)(b), (d) and (e) are matters of law. They concern how goods for export to a particular place are regulated and the conditions that apply
to their export to that place. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 43(1)(b), (d) and (e) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 43(1)(a)), that the person intended them to be imported into a particular place (irrespective of whether that intention existed at the time the goods were exported, or at a later point) (paragraph 43(1)(c)), and that the person intended to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods (paragraph 43(1)(f)).

Subclause 43(4) will provide for an alternative verdict against subclause 42(2). If the prosecution is unable to prove beyond reasonable doubt that the person intended to obtain a commercial advantage over competitors or potential competitors by exporting goods to a particular place in contravention of prescribed export conditions, the person may still be found guilty of an offence under subclause 42(2) of the Bill of exporting goods to a particular place in contravention of prescribed export conditions.

Subclause 43(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 43(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 43(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 43(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the serious consequences that may flow from exporting prescribed goods to a particular place in contravention of a prescribed export condition. For example, a prescribed export condition may be that the goods were sourced from an accredited property. The export of goods that were not sourced from an accredited property may damage Australia’s trading reputation. Obtaining a commercial advantage is an aggravated circumstance that warrants the additional penalty because of the added monetary benefit that can be gained by a person involved in this behaviour. Reliance on the basic offence under subclause 42(2) may be insufficient to eliminate dishonest trade in circumstances where there is a high financial reward.

Exporting prescribed goods to a particular place in contravention of prescribed export conditions and in the aggravated circumstances of intending to obtain a commercial advantage may undermine the integrity of the regulatory framework provided for by the Bill and may
have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 44 will provide that penalties may be imposed in circumstances where a person exports prescribed goods with the intention that they be imported into a particular place in contravention of prescribed export conditions, and the export of goods has, or has the potential to have, economic consequences for Australia. This offence is similar to the basic offence that will be prescribed in clause 42 of the Bill. However, clause 44 will create an aggravated offence where the contravention involves economic consequences for Australia or damage to Australia’s trading reputation.

Subclause 44(1) will provide that a person will contravene 44(1) if:

- the person exports goods; and
- the goods are prescribed goods; and
- the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time); and
- the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
- prescribed export conditions are not complied with; and
- the export of the goods to that place causes, or has the potential to cause, economic consequences for Australia.

The term economic consequences for Australia will be defined in clause 12 of the Bill and will include the following:

- substantial damage to Australia’s trading reputation;
- a restriction on, or the closure of, access by Australia to one or more overseas markets for all goods or a kind of goods.

The offence in clause 44 will apply where the person intends the goods to be imported into a particular place (whether that intention exists at the time the goods are exported or is formed after that time) and there is a prohibition in place for exporting goods to that place unless prescribed export conditions are complied with. This is intended to capture a person who has exported goods from Australia and has the intention (whenever formed) to transport those goods to the prohibited place.

The offence in clause 44 of the Bill will capture circumstances where a person exports goods to a particular place without complying with the relevant prescribed export conditions. The offence provides that this conduct will occur with the aggravated circumstances that the export of the goods causes, or has the potential to cause, economic consequences for Australia.
A note will be included at the end of subclause 44(1) that will provide that the physical elements of an offence against subclause 44(2) will be set out in subclause 44(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 44(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 44(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The corresponding fine for a body corporate will be determined according to the formula at clause 50A.

Subclause 44(3) will provide that strict liability will apply to the elements of the offence in paragraphs 44(1)(b) (that the goods are prescribed goods), 44(1)(d) (that the export of the goods to a place is prohibited unless prescribed export conditions are complied with) and 44(1)(e) (that the prescribed export conditions were not complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 44(1)(b)(d) and (e) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 44(1)(b), (d) and (e) are matters of law. They concern how goods for export to a particular place are regulated and the conditions that apply to their export to that place. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 44(1)(b), (d) and (e) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to export the goods (paragraph 44(1)(a)), that the person intended them to be imported into a particular place (irrespective of whether that intention existed at the time the goods were exported, or at a later point) (paragraph 44(1)(c)), and that the person intended to obtain a commercial advantage over the person’s competitors, or potential competitors, as a result of exporting the goods (paragraph 44(1)(f)).

Subclause 44(4) will provide for an alternative verdict against subclause 44(2). If the prosecution is unable to prove beyond reasonable doubt that the export of the goods to a place that is subject to prescribed export conditions has had, or has the potential to have, economic consequences for Australia, the person may still be found guilty of an offence under subclause 42(2) of exporting goods to a particular place in contravention of prescribed export conditions.

Subclause 44(5) will provide that a person will be subject to a civil penalty of 4,000 penalty units if the person contravenes subclause 44(1). The civil penalty available for individuals will be twice as high as the penalty available for the criminal offence and will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 44(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a
contravention of subclause 44(1) will be determined according to the formula at clause 50A. The formula at clause 50A provides the flexibility for a civil penalty of up to 20,000 penalty units for a corporation. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties in this clause are higher than those outlined in the Guide. This reflects the serious consequences that may flow from exporting goods to a particular place in contravention of a prescribed export condition in circumstances where there may be economic consequences for Australia, and the adverse impact that this may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). The export of goods to a particular place in contravention of a prescribed export conditions may pose significant risk to Australia’s trading reputation. The economic costs of reputational damage to a particular export industry may be far greater than even the maximum penalties imposed by the Bill. Causing economic consequences or damage to Australia’s trading reputation will create an aggravated circumstance that warrants the additional penalty due to the risk of negative impact on the export industry and the Australian public.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 45 will provide that penalties may be imposed in circumstances where a person conveys or possesses prescribed goods when the person intends to export the goods to a particular place or knows that the goods are intended to be exported to that place and the export will be in contravention of prescribed export conditions.

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

Subclause 45(1) will provide that a person will contravene 45(1) if:

- a person conveys or possesses goods; and
- the goods are prescribed goods; and
- the person intends to export those prescribed goods to a particular place that is prohibited unless prescribed export conditions are complied with; and
- the person intends to export the goods to that place; and
- the export of the goods to that place would contravene the prescribed export conditions.

A note will be included at the end of subclause 45(1) that will provide that the physical elements of an offence against subclause 45(2) will be set out in subclause 45(1). The note will refer the reader to clause 370 of the Bill which will provide further explanation of the operation of the physical elements of the offence.

Subclause 45(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 45(1). The fault-based offence will be subject to a penalty of
imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 45(2) will be 2,400 penalty units.

Subclause 45(3) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 45(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 45(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 45(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 45(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty is set at a high enough level to act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing goods that the person intends to export to a particular place in contravention of a prescribed export condition. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill and may have an adverse impact on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

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

Subclause 45(4) will provide that a person will contravene 45(4) if:

- a person conveys or possesses goods; and
- the goods are prescribed goods; and
- the export of the goods to a particular place is prohibited unless prescribed export conditions are complied with; and
- the person knows that the goods are intended to be exported to that place; and
- the export of the goods to that place would contravene the prescribed export conditions.

A note will be included at the end of subclause 45(4) that will provide that the physical elements of an offence against subclause 45(6) will be set out in subclause 45(5). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 45(5) will provide that a person will commit a fault-based offence if the person contravenes subclause 45(4). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 480 penalty units (or both for an individual). The maximum fine for a body corporate for a contravention of subclause 45(4) will be 2,400 penalty units.
Subclause 45(6) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 45(4). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 45(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 45(5) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 45(6) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conveying or possessing goods that the person knows are intended to be exported to a particular place in contravention of a prescribed export condition. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may also impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 46 will provide that penalties may be imposed in circumstances where prescribed goods that have been have been produced or prepared at a registered establishment, accredited property or other premises are exported in contravention of prescribed export conditions that relate to a person, the registered establishment, accredited property or other premises.

Clause 47 of the Bill will provide a corresponding offence where prescribed goods will be exported to a particular place. There are a number of elements to this offence and civil penalty provision.

Subclause 46(1) will provide that a person will contravene subclause 46(1) if:

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

A note will be included at the end of subclause 46(1) that will provide that the physical elements of an offence against subclause 46(2) will be set out in subclause 46(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 46(2) will provide that a person will commit a fault-based offence if the person contravences subclause 46(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 46(2) will be 2,400 penalty units.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties are significant for the fault-based offence and are designed to deter persons from exporting goods that have been produced or prepared in contravention of a condition, where the export of those goods is prohibited unless the condition has been complied with. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. In these circumstances, the consequence of non-compliant behaviour by one person may impact on the ability of others to export goods.

Subclause 46(3) will provide that strict liability will apply to the elements of the offence in paragraphs 46(1)(c) (that the goods are prescribed goods), 46(1)(e) (that the export of the goods is prohibited unless prescribed export conditions are complied with), 46(1)(f) (one or more of those conditions applies to the person, establishment, property, premises, production or preparation), and 46(1)(g) (that one or more of those prescribed export conditions is contravened). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 46(1)(c), (e), (f) and (g) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 46(1)(c), (e), (f) and (g) are matters of law. They concern how goods for export are regulated and the conditions that apply to their production or preparation for export. It is appropriate for these elements to be strict liability because persons engaged in the production or preparation of goods for export should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that
persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the *Criminal Code* to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 46(1)(c), (e), (f) and (g) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person is reckless as to whether they are the occupier of a registered establishment, the manager of an accredited property or the occupier of other premises (paragraph 46(1)(a)), the person is reckless as to whether goods are produced or prepared at that establishment, property or premises (paragraph 46(1)(b)) and the person is reckless as to whether goods may be exported after being produced or prepared at the establishment, property or premises (paragraph 46(1)(d)).

Subclause 46(4) will provide a strict liability offence for a person who contravenes subclause 46(1). The penalty for this offence will be 60 penalty units and is not punishable by imprisonment.

This offence is a strict liability offence. This means that the prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The purpose of this strict liability offence is to ensure that occupiers of establishments who produce or prepare goods for export comply with prescribed export conditions. Strict liability will be necessary to ensure the integrity of the regulatory system relating to the production or preparation of goods for export at approved establishments. In these circumstances, it is the conduct that needs to be regulated irrespective of the intention or knowledge of the person who engages in the conduct.

Subclause 46(5) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 46(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 46(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 46(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the *Regulatory Powers Act* will apply.

The civil penalty provided for in subclause 46(5) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.
The level of penalty for the fault-based offence, strict liability offence and the civil penalty reflects the serious consequences that exporting goods in contravention of export conditions may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill).

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Subclause 47 will provide that penalties may be imposed in circumstances where prescribed goods that have been produced or prepared at a registered establishment, accredited property or other premises are exported to a particular place in contravention of prescribed export conditions that relate to a person, the registered establishment, accredited property or other premises. There are a number of elements to this offence and civil penalty provision.

Subclause 47(1) will provide that a person will contravene subclause 47(1) if:

- the person is:
  - the occupier of a registered establishment; or
  - the manager of an accredited property; or
  - the occupier of premises other than a registered establishment or an accredited property; and
- goods are produced or prepared at the registered establishment, accredited property or other premises; and
- the goods are prescribed goods; and
- the goods are exported to a particular place after being produced or prepared at the registered establishment, accredited property or other premises (with or without further preparation); and
- the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
- one or more of the prescribed export conditions applies in relation to:
  - the person; or
  - the registered establishment, accredited property or other premises; or
  - the production or preparation of the goods at the registered establishment, accredited property or other premises; and
- one or more of those prescribed export conditions is contravened.

A note will be included at the end of subclause 47(1) that will provide that the physical elements of an offence against subclause 47(2) will be set out in subclause 47(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 47(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 47(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 47(2) will be 2,400 penalty units.
The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties are significant for the fault-based offence and are designed to deter persons from exporting goods that have been produced or prepared in contravention of a condition, where the export of those goods is prohibited unless the condition has been complied with. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. In these circumstances, the consequence of non-compliant behaviour by one person may impact on the ability of others to export goods.

Subclause 47(3) will provide that strict liability will apply to the elements of the offence in paragraphs 47(1)(c) (that the goods are prescribed goods), 47(1)(e) (that the export of the goods to a place is prohibited unless prescribed export conditions are complied with), 47(1)(f) (one or more of those conditions applies to the person, establishment, property, premises, production or preparation) and 47(1)(g) (that one or more of those prescribed export conditions is contravened). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 47(1)(c), (e), (f) and (g) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 47(1)(c), (e), (f) and (g) are matters of law. They concern how goods for export to a particular place are regulated and the conditions that apply to their production or preparation for export to that place. It is appropriate for these elements to be strict liability because persons engaged in the production or preparation of goods for export should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 47(1)(c), (e), (f) and (g) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person is reckless as to whether they are the occupier of a registered establishment, the manager of an accredited property or the occupier of other premises (paragraph 47(1)(a)), the person is reckless as to whether goods are produced or prepared at that establishment, property or premises (paragraph 47(1)(b)) and the person is reckless as to whether goods may be exported to a particular place after being produced or prepared at the establishment, property or premises (paragraph 47(1)(d)).

Subclause 47(4) will provide a strict liability offence for a person who contravenes subclause 47(1). The penalty for this offence will be 60 penalty units and is not punishable by imprisonment.

Strict liability means that the prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be
expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The purpose of this strict liability offence is to ensure that occupiers of establishments who produce or prepare goods for export comply with prescribed export conditions. Strict liability will be necessary to ensure the integrity of the regulatory system relating to the production or preparation of goods for export at approved establishments. In these circumstances it is the conduct that needs to be regulated irrespective of the intention or knowledge of the person who engages in the conduct.

Subclause 47(5) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 47(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 47(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 47(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 47(5) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The level of penalty for the fault-based offence, strict liability offence and the civil penalty reflects the serious consequences that exporting goods in contravention of export conditions to a particular place may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill).

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 48 will provide that penalties may be imposed in circumstances where a person makes a false or misleading representation about prescribed goods that have been entered for export. Clause 49 of the Bill will provide a corresponding offence where prescribed goods have been entered for export and the goods are to be exported to a particular place. Clause 50 of the Bill will provide a corresponding offence for entering non-prescribed goods for export.

Subclause 48(1) will provide that a person will contravene subclause 48(1) if:

- goods are entered for export by the person; and
- the goods are prescribed goods; and
- the export of the goods is prohibited unless prescribed export conditions are complied with; and
- at the time the goods are entered for export:
the person represents (either expressly or by necessary implication) that the prescribed export conditions applicable, at or before that time, in relation to the export of goods have been complied with; and

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

A note will be included at the end of subclause 48(1) that will provide that the physical elements of an offence against subclause 48(2) are set out in subclause 48(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 48(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 48(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 48(2) will be 2,400 penalty units.

Subclause 48(3) will provide that strict liability will apply to the elements of the offence in paragraphs 48(1)(b) (that the goods are prescribed goods) and 48(1)(c) (that the export of the goods is prohibited unless prescribed export conditions are complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 48(1)(b) and (c) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 48(1)(b) and (c) are matters of law. They concern how goods for export are regulated and the conditions that apply to their export. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations and entering goods for export. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who enter goods for export knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 48(1)(b) and (c) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to enter the goods for export (paragraph 48(1)(a)), that the person intended to represent that the goods complied with applicable prescribed export conditions and knew that this representation was false or misleading (paragraph 48(1)(d)).

Subclause 48(4) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 48(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 48(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 48(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 48(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for
corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty provisions are designed to encourage persons to provide correct information in relation to prescribed goods that are entered for export and not to make representations, either expressly or by necessary implication, that the relevant prescribed export conditions have been complied with when the person knows that the representation is false or misleading. Providing false or misleading information (for example, that the goods were prepared at a registered establishment if they were not so prepared) may result in the goods being exported in circumstances where, had the information not been false or misleading, the prescribed goods would not have been exported. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. In these circumstances, the consequence of non-compliant behaviour by one person may impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 49 will provide that penalties may be imposed in circumstances where a person makes a false or misleading representation about prescribed goods that are entered for export and the goods will be exported to a particular place. Clause 48 of the Bill will provide a corresponding basic offence where prescribed goods have been entered for export and clause 50 of the Bill will provide a corresponding offence for entering non-prescribed goods for export.

Subclause 49(1) will provide that a person will contravene subclause 49(1) if:

- goods are entered for export; and
- the goods are prescribed goods; and
- the goods are to be exported to a particular place; and
- the export of the goods to that place is prohibited unless prescribed export conditions are complied with; and
- at the time the goods are entered for export:
  - the person represents (either expressly or by necessary implication) that the prescribed export conditions applicable, at or before that time, in relation to the export of goods to that place have been complied with; and
  - the person does so knowing that the representation is false or misleading.

A note will be included at the end of subclause 49(1) that will provide that the physical elements of an offence against subclause 49(2) are set out in subclause 49(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 49(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 49(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 49(2) will be 2,400 penalty units.

Subclause 49(3) will provide that strict liability will apply to the elements of the offence in paragraphs 49(1)(b) (that the goods are prescribed goods) and 49(1)(d) (that the export of the goods to a place is prohibited unless prescribed export conditions are complied with). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 49(1)(b) and (d) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraphs 49(1)(b) and (d) are matters of law. They concern how goods for export to a particular place are regulated and the conditions that apply to their export to that place. It is appropriate for these elements to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations and entering goods for export. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who enter goods for export to a particular place knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraphs 49(1)(b) and (d) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to enter the goods for export (paragraph 49(1)(a)), that the person was reckless as to whether the goods were to be exported to a particular place (paragraph 49(1)(c)), that the person intended to represent that the goods complied with applicable prescribed export conditions and knew that this representation was false or misleading (paragraph 49(1)(e)).

Subclause 49(4) will provide that a person will be subject to a civil penalty of 960 penalty units if the person contravenes subclause 49(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 49(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 49(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 49(4) will be twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalties are designed to encourage persons to provide correct information in relation to prescribed goods that are entered for export and are to be exported to a particular place, and not to make representations, either expressly or by necessary implication, that the relevant prescribed export conditions have been complied with when the person knows that the
representation is false or misleading. Providing false or misleading information (for example, that the goods were prepared at a registered establishment and they were not) may result in the goods being exported in circumstances where, had the information not been false or misleading, the prescribed goods would not have been exported. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. In these circumstances, the consequence of non-compliant behaviour by one person may impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 50 will provide that penalties may be imposed in circumstances where a person makes a false or misleading representation about non-prescribed goods that are entered for export. Clause 48 and 49 of the Bill will provide the corresponding offence and civil penalties for prescribed goods.

Subclause 50(1) will provide that a person will contravene subclause 50(1) if:

- goods are entered for export by the person; and
- the goods are non-prescribed goods; and
- at the time the goods are entered for export:
  - the person makes a representation (either expressly or by necessary implication) in relation to any matters that are to be stated in a government certificate in relation to the goods (for example, that the goods meet an importing country requirement relating to the goods); and
  - the person does so knowing that the representation is false or misleading.

A note will be included at the end of subclause 50(1) that will provide that the physical elements of an offence against subclause 50(2) will be set out in subclause 50(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 50(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 50(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 50(2) will be 1,500 penalty units.

Subclause 50(3) will provide that strict liability will apply to the element of the offence in paragraph 50(1)(b) (that the goods are non-prescribed goods). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 50(1)(b) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).
The element of the offence in paragraph 50(1)(b) is a matter of law. It concerns how goods for export are regulated. It is appropriate for this element to be strict liability because persons engaged in the export of goods should know their legal obligations before commencing export operations and entering goods for export. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who enter goods for export knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 50(1)(b) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to enter the goods for export (paragraph 50(1)(a)), and that the person intended to make a representation about any matters to be stated in a government certificate in relation to the goods and knew that this representation was false or misleading (paragraph 50(1)(c)).

Subclause 50(4) will provide that a person will be subject to a civil penalty of 600 penalty units if the person contravenes subclause 50(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 50(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 48(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 50(4) will be twice the penalty available for the criminal offence. This is designed to ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The level of penalties for contravening subclause 50(1) (which relate to non-prescribed goods) are less than the penalties for contravening subclauses 48(1) and 49(1) of the Bill because of the different consequences that may flow from false and misleading representations in relation to prescribed and non-prescribed goods.

By their nature (see clause 28 of the Bill), prescribed goods are subject to a greater degree of regulatory control as the risks associated with the export of such goods are higher and the harm that may result is greater for such goods than non-prescribed goods. Accordingly, making false and misleading representations may have a more significant impact on Australia’s trading reputation and access to export markets.

The penalties are designed to encourage persons to provide correct information in relation to non-prescribed goods that are entered for export. Providing false or misleading information (for example, that the goods meet the importing country requirements if they do not) may result in the goods being exported in circumstances where had the information not been false or misleading the non-prescribed goods would not have been exported. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. In these
circumstances, the consequence of non-compliant behaviour by one person may impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

This clause will provide for the method for calculating penalties for bodies corporate and the contraventions under the Bill to which the calculations will apply. This clause will modify the application of the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act to some civil penalty provisions. The clauses to which the calculation will apply are clauses which provide for offence and civil penalty provisions for a contravention by a body corporate, where the conduct involves aggravated circumstances which warrant additional penalties due to the risk of negative impact on the export industry and the Australian public. This will recognise circumstances where a body corporate could have been involved in the contravention and it is desirable that the quantum of the penalty will appropriately reflect this circumstance.

Subclause 50A(1) will refer to the following clauses in the Bill:

- fault based offence and civil penalty provisions for contraventions for exporting goods that are subject to an absolute prohibition on export where there was an intention to obtain a commercial advantage (subclauses 31(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting goods that are subject to an absolute prohibition on export where the export of the goods has economic consequences for Australia (subclauses 32(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting goods to a temporarily prohibited place where there was an intention to obtain a commercial advantage (subclauses 35(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting goods to a temporarily prohibited place where the export of the goods has economic consequences for Australia (subclauses 36(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting prescribed goods in non-compliance with prescribed export conditions where there was an intention to obtain a commercial advantage (subclauses 39(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting prescribed goods in non-compliance with prescribed export conditions where the export of the goods has economic consequences for Australia (subclauses 40(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting prescribed goods to a particular place, in non-compliance with prescribed export conditions where there was an intention to obtain a commercial advantage (subclauses 43(2) and (5));
- fault based offence and civil penalty provisions for contraventions for exporting prescribed goods to a particular place, in non-compliance with prescribed export conditions where the export of the goods has economic consequences for Australia (subclauses 44(2) and (5)); and
- fault based offence and civil penalty provisions for contravention of a condition of an export licence (subclauses 217(2), (4), (6) and (8)).
Subclause 50A(2) will provide the method for determining the penalty amount for a body corporate. The penalty will be an amount not more than the greater of the following:

- 20,000 penalty units (50A(2)(a)); or
- if the body corporate (defined as the first body) and any related body corporate of the first body has obtained, directly or indirectly, a benefit that is reasonably attributable to the conduct constituting the convention, and the relevant court can determine the value of that benefit – 3 times the value of that benefit (50A(2)(b)); or
- if the relevant court cannot determine the value of the benefit referred to in paragraph 50A(2)(b), or if no such benefit has been obtained – 10% of the annual turnover of the first body during the period (defined as the turnover period) of 12 months ending a the month when the first body committed or began committing, the contravention (50A(2)(c)).

The formula in subclause 50A(2) will takes into account the regulatory context of exporting goods. Contravention of civil penalty provisions relating to the export of goods from Australian territory represents a risk to Australia’s export markets, which were worth $53 billion in 2016-17. It may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access for all types of goods exported from Australia. It may also have significant adverse health or biosecurity consequences in overseas markets, therefore impacting Australia’s international reputation as a reliable source of safe, high-quality goods. Some export industries are valued in multi-billion dollars, and bodies corporate in those industries stand to turnover a significant profit from the export of goods to lucrative overseas markets. A body corporate may view the payment of a low civil penalty as an ordinary cost of business unless the civil penalty is set at a level to deter this conduct. The formula is designed to respond to the potential commercial gain that a body corporate may obtain by exporting goods in contravention of a civil penalty provision of the Bill, and takes into account the relative benefit or turnover of the body corporate.

Subclause 50A(3) will provide for how the annual turnover of the first body is defined. The annual turnover will be the sum of the values of all the supplies that the first body, and any related body corporate of the first body, have made, or are likely to make, during that period, except the following:

- supplies made from the first body to any related body corporate of the first body;
- supplies made from any related body corporate of the first body to the first body;
- supplies that are input taxed;
- supplies that are not for consideration (and are not taxable supplies under section 72-5 of the A New Tax System (Goods and Services) Tax Act 1999);
- supplies that are not made in connection with an enterprise that the first body carries on.

Subclause 50A(3) will provide that expressions used in subclause 50A(3) that are also used in the A New Tax System (Goods and Services Tax) Act 1999 have the same meaning as they have in that Act.
Subclause 50A(4) will provide that the question of whether two bodies corporate are related to each other under this section is to be determined in the same way as for the purposes of the Corporations Act.

Clause 50A will provide flexibility to enable the appropriate penalty for a contravention to be determined in the circumstances.

PART 2—EXEMPTIONS

Division 1—Introduction

Clause 51 Simplified outline of this Part

Clause 51 will create a simplified outline of Part 2 of Chapter 2 of the Bill, which will enable the Secretary to grant exemptions from one or more provisions of the Bill in relation to prescribed goods (which, in Part 2 of Chapter 2 of the Bill will be referred to as relevant goods) that are to be exported. This Part will enable the Secretary to grant an exemption in certain circumstances, impose conditions on an exemption, vary the conditions of an exemption, and provide when an exemption may be revoked.

The simplified outline will be included to assist the reader to understand the substantive clauses of Part 2 of Chapter 2 of the Bill; however, it will not be intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill.

Clause 52 Application of this Part

Subclause 52(1) will be an application provision. It will provide that Part 2 of Chapter 2 of the Bill (which will set out the provisions enabling exemptions from some or all of the provisions of the Bill) will apply in relation to a kind of prescribed goods (which, in this Part will be referred to as relevant goods) that are to be exported:

- as a commercial sample; or
- for experimental purposes; or
- in exceptional circumstances; or
- in special commercial circumstances; or
- in other circumstances as prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe other circumstances in which prescribed goods may be exported (and for which an exemption may then be applied) provides the Secretary with the flexibility to determine when it is appropriate to allow other exemptions. These circumstances may arise for a range of matters relating to the prescribed goods, an importing country requirement or a requirement under the Bill that cannot be complied with. The ability to prescribe these circumstances will be necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Subclause 52(2) will provide that, for the purposes of subclause 52(1), the rules made under clause 432 of the Bill may prescribe the meaning of the terms commercial sample, experimental purposes, exceptional circumstances and special commercial circumstances.
Subclause 52(3) will be an application provision that will provide that Part 2 of Chapter 2 of the Bill will also apply to a kind of prescribed good that will be exported to a particular country (the *importing country*) if the Secretary is satisfied that it is not necessary for one or more of the provisions of the Bill to be complied with for the purpose of ensuring that importing country requirements relating to the goods are met. This will enable a person to apply for an exemption in relation to prescribed goods that are to be exported to a particular country when that particular country does not requires compliance with some or all of the Bill.

**Clause 53 Application for exemption**

An exemption may only be sought in relation to relevant goods (as set out in clause 52 of the Bill).

Subclause 53(1) will provide that, any of the following people may apply to the Secretary for an exemption from one or more provisions of the Bill:

- a person who wishes to export relevant goods;
- the manager of an accredited property where export operations in relation to relevant goods are or will be carried out;
- the occupier of a registered establishment where export operations in relation to relevant goods are or will be carried out;
- the holder of an approved arrangement that covers export operations in relation to relevant goods;
- the holder of an export licence that covers export operations in relation to relevant goods.

A note will be included at the end of subclause 53(1) to refer the reader to the definition of this Act in clause 12 of the Bill, and will clarify that a reference to this Act includes a reference to instruments made under the Bill. Therefore a person may apply for an exemption, in relation to relevant goods, from a requirement of the rules made under clause 432 of the Bill.

An exemption may be granted following an individual application rather than in relation to all goods of a particular kind or all goods exported to a particular importing country. The purpose of this is to enable a reduced level of regulatory oversight in circumstances where the risk posed by exporting the goods to an importing country is minimal and the importing country has accepted this risk.

Subclause 53(2) will provide that an application for an exemption must not be made in relation to goods that are absolutely prohibited from export (see clause 23 of the Bill) or goods that are temporarily prohibited from export (see clause 24 of the Bill). Subclause 53(2) will ensure that exemptions (for example, from a temporary prohibition determination) cannot be sought for these kinds of goods.

Subclause 53(3) will provide that an application for an exemption must:
• if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
• if the Secretary has approved a form for making an application—including the information required by the form and be accompanied by any documents required by the form; and
• set out the basis on which the exemption is sought; and
• include the information (if any) prescribed by the rules; and
• be accompanied by any documents prescribed by the rules; and
• be made within the period prescribed by the rules, or if the Secretary allows a different period—within that period.

A note will be included at the end of subclause 53(3), which will advise the reader that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and could result in an exemption being granted in circumstances that are inconsistent with the objects of the Bill.

Subclause 53(4) will enable the Secretary to accept any information or document previously given to the Secretary in connection with any application made under the Bill, or a notice of intention to export previously given under clause 243 of the Bill, as satisfying any requirement to provide that information or document under subclause 53(3) of the Bill. Subclause 53(4) will mean that an applicant will not need to provide the Secretary with the same information multiple times. This will reduce administrative burden on both the applicant and the Secretary.

Subclause 53(5) will provide that if the application does not comply with the requirements in subclause 53(3) of the Bill (including providing the information required by that subclause), the application is taken not to have been made. This clause will clarify that the Secretary will not be required to make a decision on the application if it is incomplete.

Clause 54 Secretary must decide whether to grant exemption

Secretary must decide whether to grant exemption

Subclause 54(1) will provide that on receiving an application for an exemption under clause 53 of the Bill, the Secretary must decide to grant or refuse to grant the exemption. A decision made under this clause is not a reviewable decision as decisions regarding exemptions are essentially about maintaining international confidence in Australia’s food and agricultural exports in the interests of a whole export industry. However, the Bill does not prevent a person from making a new application for an exemption in relation to the same relevant goods. A note will be included at the end of subclause 54(1), which will advise the reader that an application that does not comply with the requirements set out in subclause 53(3) of the Bill for the application, will be taken not to have been made (see notes on subclause 53(5) of the Bill).
Secretary may request further information or documents

Subclause 54(2) will enable the Secretary to make a written request that the applicant give the Secretary further specified information or documents relevant to the application. That is, information that is in addition to that which is required by subclause 53(3) of the Bill. This will ensure that the Secretary will have all the relevant information to consider when deciding whether to grant the exemption.

Grounds for granting exemption

Subclause 54(3) will provide that the Secretary may grant the exemption if satisfied, having regard to any matter prescribed by the rules or any other matter that the Secretary considers relevant, that the requirements prescribed by the rules are met and it is appropriate to grant the exemption. There is a broad range of matters that the Secretary may need to take into account when deciding to grant an exemption.

Enabling the rules to prescribe the requirements that must be met before an exemption is granted will provide the Secretary with the flexibility to determine when it is appropriate to allow exemptions in relation to the relevant goods. These requirements may arise for a range of matters relating to the prescribed goods or importing country requirements. The matters may be detailed and specific to a particular circumstance, importing country or kind of goods. The ability to prescribe these circumstances will be necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the requirements will change from time to time and will need to commence at short notice. This will not limit, however, the ability to take into account any other matters that the Secretary considers are relevant.

A note after subclause 54(3) clarifies that an exemption must not be varied.

Clause 55 Exemption may be granted subject to conditions

Subclause 55(1) will enable the Secretary to grant an exemption under paragraph 54(1)(a) of the Bill in relation to the relevant goods subject to any conditions that the Secretary considers necessary. Enabling the Secretary to set conditions on an exemption will ensure compliance with the requirements of the Bill.

A note after subclause 55(1) clarifies that conditions of an exemption may be varied.

Subclause 55(2) will provide that in considering whether it will be necessary to impose conditions on an exemption, the Secretary must have regard to the matters prescribed by the rules made under clause 432 of the Bill. Enabling the rules to prescribe the matters that must be taken into account before a condition is imposed will provide the Secretary with the flexibility to determine when it is appropriate to set conditions on an exemption. The requirement for conditions may arise for a range of matters relating to the prescribed goods or importing country requirements. The ability to prescribe these matters will be necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the requirements will change from time to time and will need to commence at short notice.

Subclause 55(3) will provide that a person will commit a fault-based offence if the person is the holder of an exemption in force under Part 2 of Chapter 2 of the Bill and the person contravenes a condition of the exemption. The penalty for the fault-based offence will be
five years imprisonment or a fine of 300 penalty units or both. The maximum fine for a body corporate for a contravention of subclause 55(3) of the Bill will be 1,500 penalty units.

Subclause 55(4) will provide that a person will be subject to a civil penalty of 600 penalty units if the person the person is the holder of an exemption in force under this Part and the person contravenes a condition of the exemption. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 55(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 55(4) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 55(4) will be twice as high as the penalty available for the criminal offence. This will ensure the penalty will be set at a high enough level to act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and which may result in the export of goods that do not comply with requirements or conditions set out in the Bill. The level of the penalties that will be available also reflect the seriousness of conduct that contravenes a condition of an exemption and the impact that this contravention may have on Australia’s trading reputation. Such conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action is commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 56 Notice of decision

Instrument of exemption

Subclause 56(1) will provide that if the Secretary grants an exemption under paragraph 54(1)(a) of the Bill in relation to the relevant goods, the Secretary must give the applicant for the exemption an instrument of exemption stating:

- the kind of goods covered by the exemption;
- if applicable, each importing country covered by the exemption;
- the basis on which the exemption has been granted;
- the provisions of the Bill covered by the exemption;
- the date (which must not be retrospective) when the exemption takes effect;
- that the exemption remains in force indefinitely or the period during which the exemption remains in force as prescribed by the rules made under clause 432 of the Bill for the purposes of paragraph 57(b) of the Bill;
- any conditions of the exemption;
- any other information prescribed by the rules.
This instrument of exemption will provide evidence of which provisions the relevant goods are exempt from having to comply with.

Enabling the rules to prescribe what must be included in the instrument of exemption provides the Secretary with the flexibility to determine what information is appropriate for the applicant and the level of detail that may be needed. These circumstances may arise for a range of technical and administrative reasons. The ability to prescribe these circumstances is necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Paragraph 56(1)(e) will provide that the date that an exemption takes effect cannot be retrospective. This is intended to prevent a person from, for example, preparing or exporting goods in contravention of a requirement of the Bill and later attempting to claim an exemption in relation to those goods from that requirement.

Subclause 56(2) will provide that the instrument of exemption under subclause 56(1) is not a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the Legislation Act. Subclause 56(2) will make a statement as to the law (that is, that instruments of approval are not legislative instruments) and will not create an actual exemption to that Act. The instrument of exemption will provide an exemption from the rules in relation to the export of particular goods to a particular place. The exemption will be limited to a person or exporter (that is, the person who applied for the exemption in relation to the relevant goods), rather than to a broad sector of the industry.

Notice of refusal

Subclause 56(3) will provide that if the Secretary decides to refuse to grant an exemption under paragraph 54(1)(b) of the Bill, the Secretary must notify the applicant in writing and provide reasons for the decision to refuse to grant the exemption. A decision made under paragraph 54(1)(b) of the Bill will not be a reviewable decision as decisions regarding exemptions are essentially about maintaining international confidence in Australia’s food and agricultural exports in the interests of a whole export industry. The Bill would not prevent a person from making a new application for an exemption in relation to the same relevant goods.

Clause 57 Period of effect of exemption

Paragraph 57(a) will provide that an exemption granted under paragraph 54(1)(a) of the Bill will take effect on the date specified in the instrument of exemption under paragraph 56(1)(e) of the Bill.

Paragraph 57(b) of the Bill will provide that the exemption will remain in force as prescribed by the rules unless it is revoked under clause 59 of the Bill. Enabling the rules to prescribe the period that an exemption remains in force will provide the Secretary with discretion to determine the appropriate period for a particular kind of relevant goods. It may be appropriate that some exemptions remain in force indefinitely, while others should cease and a new application seeking an exemption be made. Preventing an applicant from having to periodically seek a new exemption in relation to the relevant goods will reduce the administrative burden for those applicants and the Department.
Clause 58  Variation of conditions of exemption

Subclause 58(1) will provide that an exemption that is in force under this Part in relation to the relevant goods must not be varied. The note after this subclause clarifies that if changes to an exemption are needed, an application for a new exemption must be made.

Subclause 58(1) will enable the Secretary to vary the conditions of an exemption that is in force if the Secretary considers it is necessary to do so. The variation may include imposing new conditions on the exemption.

Subclause 58(2) will require the Secretary to have regard to the matters prescribed by the rules when considering whether it is necessary to vary the conditions of an exemption. Enabling the rules made under clause 432 of the Bill to prescribe the matters that must be taken into account before a condition is varied will provide the Secretary with the flexibility to determine when it is appropriate to vary conditions on an exemption. The requirement to vary a condition may arise for a range of matters relating to the prescribed goods or importing country requirements. The ability to prescribe these matters will be necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the requirements will change from time to time and will need to commence at short notice.

Subclause 58(3) will provide that if the Secretary varies the conditions of an exemption, the Secretary must give the holder of the exemption a written notice stating the varied conditions and any new conditions, the reason for varying the conditions, the date the varied conditions take effect, and any other information prescribed by the rules.

Enabling the rules to prescribe what must be included in the notice of the decision to vary a condition of an exemption provides the Secretary with the flexibility to determine what information is appropriate to inform the applicant and the level of detail that may be needed. These circumstances may arise for a range of technical and administrative reasons. The ability to prescribe these circumstances is necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Clause 59  Revocation of exemption

Subclause 59(1) will enable the Secretary to revoke an exemption that is in force in relation to the relevant goods and subclause 59(2) will require the Secretary to have regard to the matters prescribed by the rules made under clause 432 of the Bill when considering whether to revoke an exemption. Enabling the rules to prescribe the matters that must be taken into account before an exemption is revoked will provide the Secretary with the flexibility to determine when it is appropriate to revoke an exemption. The circumstances in which it may be necessary to revoke an exemption may arise for a range of matters relating to the prescribed goods or importing country requirements. The ability to prescribe these matters will be necessary for the purpose of achieving one or more requirements of the Bill and reflects the likelihood that the requirements will change from time to time and will need to commence at short notice.

Subclause 59(3) will provide that if the Secretary decides to revoke an exemption, the Secretary must give the holder of the exemption a written notice stating that the exemption is to be revoked, the reasons for the revocation, and the date the revocation takes effect.
The intent of the notice is to advise the holder of the exemption that they must now comply with the requirements of the Bill in relation to the export of goods and the exemption no longer has effect.

Clause 60  Effect of exemption

Clause 60 of the Bill will provide that if an exemption from one or more provisions of the Bill (the \textit{exempted provisions}) is in force under Part 2 of Chapter 2 of the Bill in relation to relevant goods, the exempted provisions do not apply in relation to the export of those goods by that applicant. However, any provision that is not an exempted provision will continue to apply. For example, the relevant goods may be exempt from having to be prepared at a registered establishment but all other export controls that relate to the relevant goods would still be required to be complied with.

PART 3—GOVERNMENT CERTIFICATES

Division 1—Introduction

Clause 61  Simplified outline of this Part

Clause 61 will create a simplified outline of Part 3 of Chapter 2 of the Bill, which will provide for matters in relation to government certificates. Part 3 of Chapter 2 will provide that the rules made under clause 432 of the Bill may make provision for and in relation to the issue of government certificates for prescribed goods and non-prescribed goods that are to be, or that have been, exported.

Part 3 of Chapter 2 will provide that in deciding whether to make rules in relation to goods that are not animals, plants or food, the Secretary may have regard to relevant matters, including importing country requirements, sanitary matters, Australian laws and standards, Australia’s international rights and obligations and international standards.

Part 3 of Chapter 2 of the Bill will also provide that a person may apply to an issuing body for the issue of a government certificate in relation to goods that are to be, or that have been, exported. The issuing body will be a person or body prescribed by the rules in relation to the goods or, if no person or body is prescribed in relation to the goods, the issuing body will be the Secretary. The issuing body must decide whether to issue a government certificate. The Secretary may exercise certain powers in relation to an application for a government certificate.

Part 3 of Chapter 2 of the Bill will also provide that certain issuing bodies may charge a fee in relation to things done in the performance of the issuing body’s functions or the exercise of the issuing body’s powers under \textit{this Act}.

In addition, a government certificate may be issued electronically or in another form that will be acceptable to the relevant importing country. Finally, a government certificate will have effect for a particular period.

The simplified outline is included to assist the reader to understand the substantive clauses of the chapter; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill.
Division 2—Rule-making powers

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

Subclause 62(1) will enable the rules made under clause 432 of the Bill to make provision for and in relation to the issue of government certificates for goods that are to be, or that have been, exported. Subclause 62(2) will provide examples of what the rules made for the purposes of subclause 62(1) may address. The rules may:

- specify:
  - kinds of goods in relation to which a government certificate may be issued; and
  - kinds of goods in relation to which a government certificate must not be issued; and
  - kinds of government certificates that may be issued in relation to specified kinds of goods; and
- make provision for and in relation to any of the following:
  - applications for a government certificate in relation to a kind of goods; and
  - the matters that may be stated in a government certificate in relation to a kind of goods; and
  - requirements that must be complied with in relation to a kind of goods before a government certificate may be issued.

Enabling the rules made under clause 432 of the Bill to prescribe matters relating to government certificates will provide the Secretary with the flexibility to determine the kinds of goods that are suitable or, in the case of goods that are not animal, plant or food products (non-prescribed goods referred to in paragraph (d) of the definition of goods in clause 12), unsuitable to certify, and the kinds of certificates that may be issued. In addition, enabling the rules to prescribe matters in relation to applications will ensure that the Secretary has all the relevant information required to make a decision in relation to the issue of a government certificate.

Subparagraph 62(2)(b)(iii) will enable the rules made under clause 432 of the Bill to set out the requirements that must be complied with in relation to a kind of goods before a government certificate for goods of that kind may be issued. Enabling the rules to prescribe the requirements that must be met before a government certificate may be issued will provide the Secretary with the flexibility to determine when it is appropriate to issue a government certificate. These requirements may arise for a range of matters relating to the goods or importing country requirements. The ability to prescribe these circumstances will be necessary for the purpose of achieving the objects of the Bill and reflects the likelihood that the requirements will change from time to time and will need to commence at short notice.

Subclause 62(2) will set out certain matters that the Secretary may take into account before allowing kinds of non-prescribed goods that are not animal, plant or food products to be certified on an ongoing basis.

Subclause 62(2) will provide that, in deciding whether to make rules for the purpose of subparagraph 62(2)(a)(i) specifying the kinds of non-prescribed goods that are not animal, plant or food products for which a government certificate may be issued, the Secretary may have regard to the following matters:

- any importing country requirements relating to goods of that kind;
sanitary matters (being matters relating to food safety, animal health or human health) and phytosanitary matters (being matters relating to plant health) relating to goods of that kind;

- any Australian laws and standards relating to goods of that kind;
- Australia’s rights and obligations relating to goods of that kind under any international agreements to which Australia is a party;
- any international standards relating to goods of that kind;
- any other matter the Secretary considers relevant.

This is intended to provide the Secretary with the flexibility to enable the certification of a kind of non-prescribed goods that is not an animal, plant or food product on an ongoing basis, but only when it is necessary and appropriate to do so.

This clause will be used in conjunction with subparagraph 62(1)(a)(ii) (which will allow the rules to specify the kinds of non-prescribed goods that are not animal, plant or food products that must not be certified) to ensure that the Secretary has strict control over kinds of non-prescribed goods that are not animal, plant or food products that the Department may certify, based on its expertise and regulatory remit. The Secretary will not have to consider the matters listed in subclause 62(3) in respect of animal-, plant- and food-based goods (that is, goods within paragraphs (a) to (c) of the definition of goods in clause 12), as they are suitable for certification by default.

The Secretary may have regard to similar matters when considering individual applications for the certification of a kind of non-prescribed goods that is not an animal, plant or food product in accordance with clauses 65 and 69 of the Bill. Allowing the rules to specify the kinds of non-prescribed goods that are not animal, plant or food products that will be certified on an ongoing basis will prevent the Secretary from having to make a decision in relation to these kinds of goods on a case-by-case basis. It will also provide exporters with certainty around the kinds of non-prescribed goods that are not animal, plant or food products that the Department will certify.

Clause 63 Issuing bodies

Subclause 63(1) will provide that an issuing body for a government certificate for a kind of goods that are to be, or have been, exported is:

- the person or body prescribed by the rules in relation to goods of that kind, or
- if no issuing body in relation to those kind of goods is prescribed, the issuing body is the Secretary.

Subclause 63(2) will provide that, for the purposes of subclause 63(1) of the Bill, the rules made under clause 432 of the Bill may provide that one or more of the following is an issuing body for a government certificate:

- the Secretary;
- a person or body that will be covered by an approved arrangement (see chapter 5 of the Bill in relation to approved arrangements) that provides for the person or body to issue government certificates in relation to goods of that kind;
- a specified person or body.

Enabling the rules made under clause 432 of the Bill to prescribe the issuing body for a kind of goods will provide the Secretary with the flexibility to determine the appropriate issuing
body for a particular kind of goods. An issuing body may be a person or body covered by an approved arrangement; or a specified person or body. Such third party issuing bodies are necessary in circumstances where a body or person has the specialisation, knowledge and expertise to certify a kind of goods. For example, bodies that have specialised expertise in organics certification that the Secretary may not have, will be authorised to issue certificates in relation to organic goods. The combined effect of subclauses 63(1) and 63(2) will be that the Secretary will be the issuing body for all kinds of goods, unless an issuing body is prescribed in the rules. If an issuing body is prescribed in the rules for a particular kind of goods, the Secretary will not be an issuing body for that kind of goods unless the Secretary is also prescribed in the rules.

Therefore, an application for a government certificate made under clause 65 of the Bill will be made to the issuing body specified under clause 63 of the Bill. However, if no issuing body is specified in the rules made under clause 432 of the Bill for the purposes of subclause 63(1) of the Bill, an application must be made to the Secretary.

In circumstances where an issuing body is a non-Commonwealth officer that is not under an approved arrangement, the Secretary will be able to conduct audits of that issuing body in accordance with clause 267 of the Bill. Clause 267 provides that the Secretary may require an audit to be conducted of the performance of functions and the exercise of power under this Bill by any other person (other than a Commonwealth authorised officer or a State or Territory authorised officer) who performs functions or exercises powers under the Bill (see subparagraph 267(1)(i)). This will include issuing bodies. The Secretary is also able to revoke any certificate issued by any issuing body, and may amend the rules to remove a third party issuing body.

In addition, the rules may prescribe that an issuing body, whether under an approved arrangement or not, may be required to satisfy the fit and proper person test before being able to issue government certificates (see clauses 372 and 373).

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

Subclause 64(1) will provide that an issuing body for a government certificate may charge a fee under this clause for things done in the performance of the issuing body’s functions or exercise of the issuing body’s powers under the Bill.

Subclause 64(2) will provide that a fee must not be such as to amount to taxation to address the constitutional limitation on the imposition of a tax.

Subclause 64(3) of the Bill will provide that the ability to charge a fee will not apply when the Secretary is the issuing body.

A note will be included at the end of subclause 64 to refer the reader to clause 399 of the Bill, which will provide for fees to be charged in relation to the performance of functions or the exercise of powers by the Secretary as an issuing body. Clause 399 of the Bill will enable fees to be charged for services that are provided and will be in line with the Australian Government Cost Recovery Guidelines.
Division 3—Issue of government certificate

Clause 65 Application for government certificate

Subclause 65(1) will provide that a person may apply to an issuing body for a government certificate in relation to a kind of goods that are to be, or that have been, exported.

Subclause 65(2) will provide that an application for a government certificate must:

- if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner; and
- if the Secretary has approved a form for making the application—include the information required by the form and be accompanied by any documents required by the form; and
- include the information (if any) prescribed by the rules; and
- be accompanied by any documents prescribed by the rules.

It will be necessary for the Secretary to have all the relevant and available information to make an informed decision about the issue of a government certificate. Enabling rules made under clause 432 of the Bill to prescribe any information or documents that the person should provide to the Secretary in relation to an application for a government certificate will provide the Secretary with the flexibility to determine additional matters which are of importance and may be specific to a particular kind of non-prescribed goods, prescribed goods or export market. The ability to prescribe these changes also reflects the likelihood that they will need to change from time to time and will need to commence at short notice.

Two notes will be included at the end of subclause 65(2). Note 1 will provide that in accordance with subclause 239(4) of the Bill, the Secretary will be able to approve a single form that may be used to apply for an export permit for a kind of prescribed goods and a government certificate in relation to the goods. This will accommodate circumstances where an export permit and government certificate are required for the same consignment and will reduce the regulatory burden caused by requiring two applications.

Note 2 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and which could result in a government certificate being issued contrary to a requirement of the Bill.

Subclause 65(3) will enable the Secretary to accept any information or document previously given to the Secretary in connection with any application made under the Bill, or a notice of intention to export previously given under the Bill as satisfying any requirement to provide that information or document under subclause 65(2) of the Bill. This subclause will ensure that an applicant does not need to provide the Secretary with the same information multiple times. This will reduce the administrative burden on both the applicant and the Department.

Subclause 65(4) will provide that if the application does not comply with the requirements in subclause 65(2) (including providing information or documents required by that subclause), the application is taken not to have been made. This clause will clarify that the Secretary will not be required to make a decision on the application if it is incomplete.
Clause 66 Additional or corrected information

Subclause 66(1) will provide that a person who has made an application to an issuing body under clause 65 of the Bill will be required to comply with subclause 66(2) if:

- the person becomes aware that information included in the application, or information or a document given to the issuing body in relation to the application, was incomplete or incorrect; or
- a change prescribed by the rules occurs.

This will ensure that the relevant issuing body has access to the most accurate information possible in order to assess whether a government certificate should be issued. (Note that clause 74 of the Bill will deal with providing additional or corrected information in relation to an application for a government certificate after the government certificate has been issued).

Enabling the rules made under clause 432 of the Bill to prescribe a change for which it is necessary for a person to provide additional or corrected information will give the Secretary flexibility to determine the changes that may be relevant to the issuing body’s decision in relation to the application. The ability to prescribe these circumstances in the rules reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Subclause 66(2) will provide that additional or corrected information, to the extent that it will be relevant to considering the application for a government certificate, must be given to the issuing body as soon as practicable (which will be determined on a case-by-case basis). Additional or corrected information that will not be relevant to that assessment will not need to be provided to the issuing body.

Two notes will be included at the end of subclause 66(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and could result in a government certificate being issued or remaining in force contrary to the Bill.

Note 2 will provide that clause 66 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to an application for a certificate and if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 66(3) will provide that a person will be liable to a civil penalty if the person is required to give additional or corrected information to the Secretary under subclause 66(2) of the Bill and the person fails to comply with that requirement.
The civil penalty prescribed by subclause 66(3) will be 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 66(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 66(2) will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to conduct that will be inconsistent with the requirements of this clause. It will be necessary for the Secretary to have relevant and correct information to determine whether a government certificate should remain in force. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

Clause 67   Issuing body must decide whether to issue government certificate

Subclause 67(1) will provide that, on receiving an application for a government certificate under clause 65, the issuing body will be required to decide to issue the certificate or refuse to issue the certificate.

Two notes will be included at the end of subclause 67(1). Note 1 will provide that an application that does not comply with the requirements referred to in subclause 65(2) of the Bill for the application will be taken not to have been made. The note will refer the reader to subclause 65(4) of the Bill, which will set out the grounds for refusing to issue a government certificate.

Note 2 will advise the reader that a decision in relation to the application for a government certificate may be made by the operation of a computer program. The note will refer the reader to clause 286 of the Bill, which deals with computer generated decisions.

Subclause 67(2) will enable the issuing body to make a written request that the applicant give the issuing body further specified information or documents relevant to the application. This will ensure that an issuing body has all the relevant information on which to make a decision to issue a government certificate.

A note will be included at the end of subclause 67(2), which will provide that if the issuing body is the Secretary, the Secretary will be able to exercise additional powers set out in clause 68 of the Bill.

Grounds for refusing to issue government certificate

Subclause 67(3) will provide the circumstances in which the issuing body will be able to refuse to issue a government certificate in relation to the goods. The issuing body may refuse to issue a certificate if:

- the issuing body is not satisfied, having regard to any matter that the issuing body considers relevant, that:
  - the requirements of this Act in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country; or
o any importing country requirements relating to the goods have been met, or
will be met before the goods are imported into the importing country; or
o the matters to be stated in the government certificate in relation to the goods
are true and correct; or

• the issuing body reasonably believes that the applicant:
  o made a false, misleading or incomplete statement in the application for the
certificate; or
  o gave false, misleading or incomplete information or documents to the issuing
body or to another person performing functions or exercising powers under the
Bill; or
  o gave false, misleading or incomplete information or documents to the
Secretary, or the Department, under a prescribed agriculture law; or

• any information or documents requested under subclause 67(2) are not given to the
issuing body within a reasonable period after the request was made; or

• the applicant refused to consent to a request by a person to enter premises of the
applicant:
  o to conduct an audit of export operations carried out in relation to the goods
under Part 1 of Chapter 9; or
  o to carry out an assessment of the goods under Part 2 of that Chapter; or

• the applicant refused to cooperate with a request made by the issuing body, or any
other person performing functions or exercising powers under this Act, in relation to
the goods; or

• the issuing body reasonably believes that the applicant has contravened a requirement
of the Bill in relation to the goods; or

• circumstances prescribed by the rules exist.

Enabling the rules to prescribe the circumstances in which government certificates for goods
may be refused provides the Secretary with the flexibility to determine when it is appropriate
to refuse to issue a certificate in addition to the circumstances provided for by the Bill. These
circumstances may arise for a range of technical and administrative reasons. The ability to
prescribe these circumstances is necessary for the purpose of achieving one or more objects of
the Bill and reflects the likelihood that the circumstances prescribed will change from time to
time and will need to commence at short notice.

Notice of refusal

Subclause 67(4) will provide that if the issuing body decides not to grant a government
certificate, the issuing body must notify the applicant in writing. This will ensure an applicant
is aware of the outcome of their application. A decision made under clause 67 will not be a
reviewable decision. Decisions regarding government certificates represent one of the final
decisions to enable goods to be imported into the importing country once all other
requirements and conditions have been met. Such decisions are essentially about maintaining
international confidence in Australia’s agricultural exports in the interests of a whole export
industry, or part of that industry, and ensuring that agricultural exports achieve a consistent
standard. Further, government certificates are high-volume decisions and often made in
relation to perishable items. Given the specific timeframes that an exporter may be operating
under, providing for the review of a decision made under clause 67 would not be practical.
Clause 68  Powers of Secretary in relation to application

Subclause 68(1) will provide that, if an application for a government certificate is made to the Secretary as the issuing body under clause 65 of the Bill, the Secretary may do anything the Secretary considers necessary in relation to the application, including the following:

- request, in writing, the applicant, or another person who the Secretary considers may have information or documents relevant to the application, to give the Secretary further specified information or documents relevant to the application;
- require an audit of export operations carried out in relation to the goods to be conducted under Part 1 of Chapter 9;
- require an assessment of the goods to be carried out under Part 2 of Chapter 9;
- request the applicant to give the Secretary a written statement, signed and dated by the applicant, verifying that:
  - the requirements of the Bill in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country; and
  - any importing country requirements relating to the goods have been met, or will be met before the goods are imported into the importing country, and
  - the matters to be stated in the government certificate are true and correct;
- take, test or analyse samples of goods, or from equipment or other things that are relevant to the application;
- arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of goods, or from equipment or other things, that are relevant to the application;
- any other thing prescribed by the rules.

The ability of the Secretary to do anything the Secretary considers necessary when considering an application may include, for example, seeking consent to enter premises or to see a demonstration of export operations. That is, the indicative list of what the Secretary may do when considering an application as set out in subclause 68(1) does not list all the things the Secretary may be able to do when considering an application and does not, for example, preclude the Secretary from exercising similar powers to those set out in clause 379 (in relation to applications generally) of the Bill.

The list provided for under subclause 68(1) is indicative of what the Secretary may do when deciding whether to issue a certificate. Enabling the rules made under clause 432 of the Bill to prescribe any other thing that the Secretary may do for the purpose of making a decision is intended to ensure that the Secretary has the ability to obtain any other information that is relevant to the application.

Two notes will be included at the end of subclause 68(1). Note 1 will refer the reader to Division 2 of Part 6 of Chapter 11 of the Bill, which will set out provisions relating to taking, testing and analysing samples. Note 2 will provide that an audit of export operations carried out in relation to a kind of non-prescribed goods by a person to whom a government certificate has been issued may be conducted at any time during the period of 18 months after the certificate was issued. Note 2 will also refer the reader to subclause 266(4) of the Bill.

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

Subclause 69(1) will be an application provision that will provide that clause 69 will apply in relation to an application to the Secretary for a government certificate that relates to a kind of
goods (the **relevant goods**) referred to in paragraph (d) of the definition of goods in clause 12 that are:

- non-prescribed goods; and
- are not specified by the rules made for the purposes of subparagraphs 62(2)(a)(i) or 62(2)(a)(ii).

Subclause 69(1) will mean that the Secretary will only need to consider the matters listed in subclause 69(2) if the application relates to non-prescribed goods that are not animal, plant or food products and are not listed in rules made for the purpose of subparagraphs 62(2)(a)(i) or 62(2)(a)(ii) of the Bill. Such rules would either allow the ongoing certification of, or prevent the certification of, non-prescribed goods that are not animal, plant or food products. The reason for this is that the Secretary would already have considered whether it is appropriate for the person to issue a government certificate in relation to those goods.

Subclause 69(2) will set out the matters that the Secretary will be able to take into account when considering whether to issue a government certificate in relation to kinds of non-prescribed goods that are not animal, plant or food products to which an application under subclause 65(1) of the Bill has been made. These matters will be in addition to those matters that will be referred to in subclause 67(3) of the Bill and will be:

- any importing country requirements relating to the relevant goods;
- sanitary matters (being matters relating to food safety, animal health or human health) and phytosanitary matters (being matters relating to plant health) relating to the relevant goods;
- Australia’s rights and obligations relating to the relevant goods under any international agreements to which Australia is a party;
- any international standards relating to the relevant goods;
- any other matter the Secretary considers relevant.

Subclause 69(3) will provide that the Secretary need not have regard to the matters in subclause 69(2) of the Bill if goods of the same kind as the relevant goods have previously been exported to a country and the Secretary has previously issued a government certificate in relation to goods of that kind that have been exported to that country. The reason for this is that the Secretary would already have considered the matters when deciding to issue a certificate in relation to that kind of non-prescribed goods.

This clause is intended to ensure that the Secretary has the flexibility to certify kinds of non-prescribed goods that are not animal, plant or food products but only when it is necessary and appropriate to do so.

This clause will be used in conjunction with paragraph 62(1)(a)(ii) and subclause 62(3) of the Bill, which will allow the rules to specify kinds of non-prescribed goods that are not animal, plant or food products which the Secretary may certify on an ongoing basis, and subparagraph 62(1)(a)(ii) of the Bill, which will allow the rules to specify kinds of non-prescribed goods that are not animal, plant or food products that the Secretary will not certify. Together, these provisions are intended to ensure that the Secretary has strict control over the kinds of non-prescribed goods that are not animal, plant or food products that the Department may certify, based on its expertise and regulatory remit. The Secretary will not have to consider the matters listed in subclause 69(2) in respect of animal-, plant- and food-based goods (that is, goods within paragraph (a) to (c) of the definition of goods in clause 12), as they are suitable for certification by default.
Clause 70  Government certificate for goods that are to be, or that have been, exported from certain external Territories

Clause 70 will provide that if Part 3 of Chapter 2 of the Bill extends to an external Territory or an area adjacent to that external Territory under subclause 8(2) of the Bill and a government certificate is issued in relation to a kind of goods that are to be, or have been, exported from that Territory or area, the government certificate may state that the goods are from that Territory.

The purpose of this clause is to enable government certificates to identify whether goods come from the Territories or from the rest of Australia. This is because Australia's access to its international markets has been negotiated on the basis of its reputation of freedom from pests and diseases that exist in the rest of the world, including in the Territories. It is important that government certificates issued under the Bill can make a distinction between goods exported from Australia and goods exported from the Territories. However, this clause does not prevent the issue of a government certificate stating that goods being exported from an external Territory are from the ‘Australian territory’.

Clause 71  Manner of issuing government certificate

The primary purpose of a government certificate is to facilitate the import of goods by an importing country. Clause 71 will enable a government certificate in relation to a kind of goods to be issued electronically or in another form that an importing country will accept.

Clause 72  Period of effect of government certificate

Subclause 72(1) will provide that a government certificate will take effect either on the date it is issued, or if a later date is stated in the certificate, on that later date. Subclause 72(2) will clarify that where a government certificate relates to a single consignment, the government certificate will remain in force until the expiry date specified in the certificate, or the date the certificate is accepted or rejected by the importing country, whichever occurs earlier.

Where a government certificate relates to two or more consignments of goods, subclause 72(3) will provide that the government certificate will remain in force until whichever of the following first occurs:

- the expiry date specified in the certificate;
- the date on which any of the consignments is rejected by the importing country; or
- the day on which the last consignments of the goods is accepted by the importing country.

Subclause 72(4) will clarify that despite subclauses 72(2) and 72(3), a government certificate will cease to be in force if:

- the goods are no longer intended to be exported to the country in relation to which the certificate was issued; or
- the certificate is revoked; or
- circumstances prescribed by the rules exist.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances when a government certificate will cease to be in force is necessary and appropriate to provide the
Secretary with the flexibility to specify circumstances that may be relevant to, for example, a particular commodity or market.

Division 4—Other matters

Clause 73 Secretary may require assessment of goods

Clause 73 will provide that the Secretary may require an assessment of goods in certain circumstances.

Subclause 73(1) is an application clause that will provide that clause 73(1) will apply if a government certificate is in force in relation to a kind of non-prescribed goods.

Subclause 73(2) will provide that the Secretary may require an assessment of the goods to be carried out under Part 2 of Chapter 9 of the Bill if the Secretary reasonably believes that:

- the requirements of the Bill have not been complied with, or are not likely to be complied with before the goods are imported into the importing country; or
- an importing country requirement relating to the goods will not be, or is not likely to be, met before the goods are imported into the importing country; or
- the matters stated in the government certificate in relation to the goods are no longer true and correct; or
- circumstances prescribed by the rules exist.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances in which the Secretary may require an assessment of non-prescribed goods will provide the Secretary with the flexibility to determine when an assessment may be necessary. This may be on a commodity or market basis. This will enable the Secretary to respond, in a short period of time, to changes in the requirement for the export of non-prescribed goods and the import of those goods into the importing country.

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

Clause 74 will create an obligation on a holder of a government certificate (as opposed to the applicant for a government certificate which will be dealt with in clause 66 of the Bill) to provide additional or corrected information to the relevant issuing body if:

- the person becomes aware that information included in an application for a government certificate was incomplete or incorrect; or
- a change prescribed by the rule occurs.

Subclause 74(2) will provide that the holder of the government certificate must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to assessing whether:

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

Additional or corrected information that will not be relevant to that assessment of these matters will not need to be provided to the issuing body.

Enabling the rules made under clause 432 of the Bill to prescribe a change for which it is necessary for a person to provide additional or corrected information will give the Secretary flexibility to determine whether any action needs to be taken in relation to the government certificate. For example, additional or corrected information may be such that, had the Secretary had the correct and complete information at the time of assessing the application, the government certificate may not have been granted. The ability to prescribe these circumstances in the rules reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Two notes will be included at the end of subclause 74(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and which could result in the a government certificate being issued in non-compliance with the Bill.

Note 2 will provide that clause 74 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to a certificate that is in force and if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill may not result in criminal or civil proceedings against the person who provided the material.

Subclause 74(3) will provide that a person will be liable to a civil penalty if the person is required to give additional or corrected information to the issuing body under subclause 74(2) of the Bill and they fail to comply with that requirement.

The civil penalty prescribed by subclause 74(3) will be 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 74(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 74(2) will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to the holder of a government certificate for not providing the corrected or additional information. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.
Clause 75  
Revocation of government certificate

Subclause 75(1) will enable the issuing body that issued a government certificate in relation to a kind of goods, or the Secretary, to revoke a certificate if the issuing body or Secretary reasonably believes any of the following:

- information specified in the government certificate is incorrect;
- the Bill has not been, is not being or will not be complied with in relation to the goods;
- an importing country requirement relating to the goods will not be or is not likely to be met;
- the integrity of the goods cannot be ensured;
- the holder of the government certificate has engaged in conduct that intimidated, hindered or prevented a person performing functions or exercising powers under the Bill;
- the holder of the government certificate gave false, misleading or incomplete information;
- the goods have not, or is not being, kept securely as required in rules made for the purpose of clause 408 of the Bill;
- circumstances prescribed by the rules exist.

Enabling the rules made under clause 432 to prescribe the circumstances in which a government certificate for a kind of goods may be revoked provides the Secretary with the flexibility to determine when it is appropriate to do so. These circumstances may arise for a range of technical and administrative reasons related to a prescribed good, an importing country requirement or a requirement under the Bill that cannot be complied with. The ability to prescribe these circumstances is necessary for the purpose of achieving one or more of the requirements of the Bill and reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 75(1), which will provide that a government certificate that has been issued in relation to a kind of goods will be taken to have been revoked if a temporary prohibition determination applies in relation to the goods. This will apply to government certificates that have been issued for goods that have been, or are to be, exported (see subclause 26(1)).

Subclause 75(2) will provide that if the issuing body or Secretary revokes a government certificate under subclause 75(1), the issuing body or Secretary must notify the applicant in writing.

Clause 76  
Return of government certificate

Subclause 76(1) will enable the rules made under clause 432 of the Bill to require a person who is in possession of a government certificate that was issued to the person to return the certificate to the issuing body in circumstances prescribed by the rules and at the time, or within the period, prescribed by the rules.

Enabling the rules to prescribe the circumstances in which a government certificate for a kind of goods must be returned will provide the Secretary with the flexibility to determine when it is appropriate to do so. These circumstances may arise for a range of technical and administrative reasons related to a kind of good, an importing country requirement or a requirement under the Bill that cannot be complied with. The ability to prescribe these
circumstances is necessary for the purpose of achieving one or more of the objects of the Bill and reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Subclause 76(1) will also provide that a government certificate must be returned to the issuing body that issued it.

The requirement to return a government certificate does not apply to government certificates that were issued electronically as they will be revoked by the computer system.

Subclause 76(2) will provide that a person will be liable to a civil penalty if they are required to return a government certificate under the rules made for the purposes of subclause 76(1) and they fail to comply with that requirement. This penalty is intended to provide an effective deterrent to conduct that may impede the effective regulation of exports under the Bill. This penalty is also intended to deter the fraudulent use of a government certificate.

The civil penalty prescribed by subclause 76(2) will be 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 76. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 76 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The penalty is intended to deter persons from retaining certificates that are no longer in force to avoid any fraudulent use of those certificates and to enable the Secretary to effectively monitor the export of goods from Australian territory. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access.

Chapter 3—Accredited properties

PART 1—INTRODUCTION

Clause 77  Simplified outline of this Chapter

Clause 77 will provide for a simplified outline of Chapter 3 of the Bill. Chapter 3 will provide for matters in relation to an application for the accreditation of a property, as well as the renewal, variation, suspension and revocation of an accreditation. Accredited properties are one of the regulatory controls provided for in the Bill that allow people in the export system to take some responsibility for meeting requirements while enabling the Secretary to have regulatory oversight of their export operations and activities. Provisions in this chapter enable the rules to prescribe requirements that will apply before a property becomes accredited, and conditions in relation to certain matters covered by the accreditation.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 1 of Chapter 3; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
PART 2—APPLICATION FOR ACCREDITATION

Clause 78  Application for accreditation of property

Subclause 78(1) will enable the manager of a property to apply to the Secretary to accredit the property for a kind of export operations in relation to a kind of prescribed goods. For example, a manager could apply to accredit a property to breed or carry out husbandry activities in relation to livestock from which meat for export is derived.

Paragraph 78(2)(a) will provide that the application may relate to more than one kind of export operations and more than one kind of prescribed goods. For example, a property may be accredited to produce apples and oranges, as well as process, pack and store the fruit for export.

Paragraph 78(2)(b) will provide that the application may, but is not required to, specify one or more places to which the goods may be exported. This will enable the particular market or markets to be included in the application for accreditation, but this will not be mandatory.

Two notes will be included at the end of subclause 78(2). Note 1 will advise the reader that the export of a kind of prescribed goods may be prohibited unless export operations in relation to the goods have been carried out at an accredited property. Note 1 will also refer the reader to clause 29 of the Bill, and the rules made under clause 432 of the Bill for the purposes of clause 29 of the Bill. Note 2 will refer the reader to clause 377 of the Bill, which will set out the requirements for applications, including applications to accredit a property.

Clause 79  Secretary must decide whether to accredit property

Subclause 79(1) will provide that, on receiving an application under clause 78 of the Bill to accredit a property, the Secretary must decide either to accredit the property or to refuse to accredit the property.

Four notes will be included at the end of subclause 79(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to applications, including applications for accreditation. Clause 379 of the Bill will set out the Secretary’s powers in dealing with applications and the time within which a decision must be made.

Note 2 will clarify that if the application is to accredit a property for more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to accredit the property for one or more of the export operations, in relation to one or more of those kinds of goods, for export to one or more of those places. This is intended to make it clear that the Secretary will have the discretion to accredit a property for any combination of export operations, prescribed goods or places of export.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period (which will be prescribed by the rules), the Secretary is taken to have refused the application at the end of that period. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.

Note 4 will advise the reader that a decision to refuse to accredit the property under subclause 79(1) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11
of the Bill. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 79(2) will provide that the Secretary may accredit the property if the Secretary is satisfied that, having regard to any matter that the Secretary considers relevant, that the following requirements are met:

- either:
  - all relevant Commonwealth liabilities of the manager of the property, or relating to the property, have been paid or are taken to have been paid; or
  - if one or more relevant Commonwealth liabilities of the manager, or relating to the property, have not been paid or are not taken to have been paid – the non-payment is due to exceptional circumstances;
- any other requirements prescribed by the rules.

A note will be included at the end of subclause 79(2), which will refer the reader to clause 431, which will assist in relation to whether a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances, relevant to subclause 79(2)(a).

Subclause 79(3) will provide examples of the kind of matters the rules may prescribe. These include requirements in relation to:

- the manager of a property;
- the kind of property;
- a kind of export operations;
- a kind of prescribed goods; and
- importing country requirements.

Enabling the rules made under clause 432 of the Bill to prescribe the requirements that must be met before a property will be accredited will provide the Secretary with the flexibility to ensure that it will be appropriate in all the circumstances to accredit the property and that there are no reasons to refuse the application. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Subclause 79(4) will enable the Secretary to set an expiry date for an accreditation if appropriate. Two notes will be included at the end of subclause 79(4). Note 1 will advise the reader that if there is no expiry date for the accreditation of a property, the accreditation remains in force unless it is revoked in accordance with subclause 82(1) of the Bill. Note 2 will advise the reader that a decision to set an expiry date for the accreditation of a property under subclause 79(4) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 79(5) will enable the Secretary to set an expiry date for the accreditation of the property under subclause (4) even if rules made for the purposes of subclause 82(5) apply in relation to the accreditation. For example, rules made for the purposes of subclause 82(5) may provide may provide an expiry date for accreditation of an accredited property as ten years from the date of accreditation. This would not prevent the Secretary from setting a different expiry date for that property, for example, five years from the date of accreditation under subclause 79(5), if the Secretary considers that expiry date more appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These
clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for specific applications, even if rules are made setting an expiry date for accredited properties.

**Clause 80 Conditions of accreditation**

Subclause 80(1) will provide that, if the Secretary accredits a property in relation to a kind of export operations in relation to a kind of prescribed goods, the accreditation of the property will be subject to the following:

- the conditions that will be provided by the Bill;
- the conditions that will be prescribed by the rules (other than those conditions which the Secretary decides are not to apply for a particular accreditation application). The conditions that are not to apply to a particular accreditation will be required to be set out in the notice of decision given to the applicant under clause 81 of the Bill;
- any additional conditions that the Secretary considers are appropriate for the accreditation under consideration. These additional conditions will be required to be set out in the notice of decision given to the applicant under clause 81 of the Bill.

Four notes will be included at the end of subclause 80(1). Note 1 will refer the reader to clause 106 of the Bill, which will provide that the manager of an accredited property may commit an offence or be liable to a civil penalty if a condition of the accreditation is contravened. Note 2 will refer the reader to clauses 94 and 102 of the Bill, which will provide that the accreditation of a property may be suspended or revoked if a condition of the accreditation is contravened. Note 3 will advise the reader that a decision to accredit a property under subclause 80(1) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to Part 7 of Chapter 3 of the Bill, which will set out additional obligations of the manager of an accredited property.

Subclause 80(2) will provide examples of the kind of conditions that the rules made for the purpose of 80(1) may prescribe. These may be conditions that relate to:

- the manager of a property;
- the kind of property;
- a kind of export operations;
- a kind of prescribed goods; and
- importing country requirements relating to a kind of export operations or a kind of prescribed goods.

Enabling the rules made under clause 432 of the Bill to prescribe the conditions that must be met will provide the Secretary with the flexibility to determine the conditions that are necessary and appropriate for a certain type of accredited property. This may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers appropriate for the accreditation under consideration will give the Secretary flexibility to determine additional conditions, relevant to a particular application, on a case-by-case basis. Imposing any additional conditions will also be necessary to ensure that the accreditation will be suitable for the export operations it will cover and that it will meet the requirements of the Bill.
The ability to impose conditions in the rules or by written notice is necessary to ensure that the export operations carried out at the accredited property will meet the requirements of the Bill. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Subclause 80(3) will provide that, for the purposes of the Bill, conditions to which the accreditation will be subject under subclause 80(1) or clause 85 of the Bill (conditions of renewed application) are conditions of the accreditation. Contravention of the conditions of an accreditation may be grounds for the suspension of an accreditation under paragraph 94(1)(c) of the Bill or for revocation of an accreditation under paragraph 102(1)(c) of the Bill.

Clause 81 Notice of decision

Clause 81 will provide that if the Secretary approves an application for accreditation, then the Secretary must give the applicant a written notice that sets out the following information:

- the accreditation number allocated to the property;
- the kind of export operations and kind of prescribed goods covered by the accreditation;
- each place the kind of prescribed goods covered by the accreditation may be exported (if applicable);
- the date the accreditation takes effect;
- that the accreditation remains in force indefinitely or the expiry date for the accreditation;
- any conditions that are prescribed by the rules that are not conditions of the accreditation;
- any additional conditions of the accreditation;
- the name of the manager of the property; and
- any other information prescribed by the rules.

The primary intent of the written notice is to inform the applicant of the Secretary’s decision as well as to provide information about the conditions that will apply to their accreditation. The notice will not set out all conditions or requirements that are applicable to the accreditation in the rules made under clause 432 of the Bill, but will identify any conditions in the rules that do not apply, as well any conditions of the accreditation that are particular to this application. Providing this information will enable the applicant to readily identify the conditions of the accreditation that must be complied with.

Enabling the rules made under clause 432 of the Bill to prescribe any other information that must be stated in a written notice in paragraph 81(i) will provide the Secretary with the flexibility to determine additional matters that are of importance to the approval of the property. Such matters may be, for example, specific to a kind of prescribed goods, kind of export operations, or place of export. The ability to prescribe other information also reflects the likelihood that the requirements of a written notice will change from time to time and will need to commence at short notice.

Clause 82 Period of effect of accreditation

Clause 82 will set out the period of effect of accreditation for accredited properties under different scenarios; for accreditations that have no expiry date (see subclause 82(1)), when the
accreditations have an expiry date (see subclause 82(2), (3) and 82(4)) and when the rules prescribed a period of effect for accreditation (see subclause 82(5)).

**Accreditations that have no expiry date**

If no expiry date is set for the accreditation of a property, subclause 82(1) will provide that the accreditation will remain in force unless it is revoked under Part 6 of Chapter 3 of the Bill or is taken to be revoked under subclause 109(3) of the Bill.

**Accreditations that have an expiry date**

Subclause 82(2) will provide that if there is an expiry date for the accreditation of a property, the accreditation will remain in force until the end of that expiry date, unless the accreditation is renewed under Part 3 of Chapter 3 of the Bill, or revoked under Part 6 of Chapter 3 of the Bill or is taken to be revoked under subclause 109(3) of the Bill.

Subclause 82(3) will provide that there is an expiry date for the accreditation of a property if:

- rules made for the purposes of subclause 82(5) apply in relation to the accreditation; or
- an expiry date for the accreditation set under subclause 79(4) or 84(3) or paragraph 90(1)(c) or 90(1)(d) of the Bill is in force in relation to the accreditation.

Subclause 82(4) will provide that the *expiry date* for the accreditation of a property is:

- if rules made for the purposes of subclause 82(5) apply in relation to the accreditation and no expiry date set under subclause 79(4) or 84(3) or paragraph 90(1)(c) or 90(1)(d) is in force in relation to the accreditation – the last day of the period prescribed by the rules; or
- if an expiry date for the accreditation set under subclause 79(4) or 84(3) or paragraph 90(1)(c) or 90(1)(d) is in force in relation to the accreditation – that date.

**Rules may prescribe period of effect of accreditation**

Subclause 82(5) will provide that the rules may prescribe the period during which the accreditation of a property remains in force. The rules may apply in relation to:

- accreditations of properties generally; or
- accreditations of properties for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

This clause will provide certainty to the manager of a property about the period of effect of the accreditation (if any) and the circumstances, such as a revocation or renewal, which may change this period.
PART 3—RENEWAL OF ACCREDITATION

Clause 83  Application to renew accreditation of property

Subclause 83(1) will provide that clause 83 will apply in relation to an accredited property (including one that has been suspended) if there is an expiry date for the accreditation.

A note will be included at the end of subclause 83(1) that will advise the reader to refer see subclauses 82(3) and 82(4) of the Bill in relation to the expiry date for the accreditation of a property.

Subclause 83(2) will provide that, if there is an expiry date for an accreditation, the manager of the property may apply to the Secretary to renew the accreditation. A note will be included at the end of subclause 83(2) that will refer the reader to clause 377 of the Bill, which will set out the general requirements for applications under the Bill, including applications to renew the accreditation of a property.

Paragraph 83(3)(a) will provide that the application for renewal may relate to more than one kind of export operations and more than one kind of prescribed goods. Paragraph 83(3)(b) will provide that the application may, but will not be required to, specify one or more places to which the goods are to be exported. The application to renew the accreditation of the property does not necessarily have to relate to the same kind of export operations or prescribed goods, or specify the same places to which the goods are to be exported, for which the property was originally accredited. The application for renewal can cover the same matters or different matters.

Subclause 83(4) will provide that an application for renewal must be made within the period prescribed by the rules or any longer period allowed by the Secretary. Enabling the Secretary to prescribe this period in the rules made under clause 432 of the Bill will ensure the Secretary has the flexibility to set an appropriate period for the consideration of the application.

Subclause 83(5) will provide that if an application for renewal is made after the period that applies under subclause 83(4), then it is taken to be a new application to accredit the property. Subclause 83(5) will also provide that the provisions in Part 2 of Chapter 3 of the Bill (which relate to new applications for accreditation) will apply in relation to the application, and the other provisions in Part 3 of Chapter 3 of the Bill (which relate to applications for renewal of accreditation) will not apply.

Clause 84  Secretary must decide whether to renew accreditation

Subclause 84(1) will provide that, if the Secretary receives an application to renew the accreditation of a property under clause 83 of the Bill, the Secretary must decide either to renew, or to refuse to renew, the accreditation.

Four notes will be included at the end of subclause 84(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to applications for accreditation, including the Secretary’s powers in dealing with an application to renew accreditation and the time within which a decision must be made.

Note 2 will clarify that if the application is made to renew the accreditation for more than one kind of export operations in relation to more than one kind of prescribed goods for export to
one or more places, the accreditation may be renewed in relation to one or more of the export operations, in relation to one or more of those kinds of goods, for export to one or more of those places. This is intended to make it clear that the Secretary will have the discretion to renew the accreditation of a property for any combination of export operations, prescribed goods or places of export.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period, the Secretary is taken to have refused the application at the end of that period. Subclause 379(3) of the Bill will provide that the consideration period will be prescribed by the rules. Prescribing this period in the rules will provide the Secretary with the flexibility to set an appropriate period for the consideration of the application.

Note 4 will advise the reader that a decision to refuse to renew the accreditation of the property under subclause 84(1) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 84(2) will provide that the Secretary may refuse to renew an accreditation if the Secretary is satisfied, having regard to any matter the Secretary considers relevant, of one of more of the following:

- the requirements prescribed by the rules for the purposes of subparagraph 79(2)(b) are continuing to be met—these will be the requirements that were required to be met before a property could be accredited;
- all relevant Commonwealth liabilities of the manager of the property, or relating to the property, have been paid or are taken to have been paid, or, if they have not been paid or are not taken to have been paid, the non-payment is due to exceptional circumstances;
- the manager of the property has complied with the requirements of the Bill—for example, the obligations that will be set out in Part 7 of Chapter 3 of the Bill;
- the conditions of the accreditation have been, and are being, complied with; and
- any other requirements prescribed by the rules is being, or has been, met.

Enabling the rules made under clause 432 of the Bill to prescribe any other requirement that must be met before an accreditation will be renewed will provide the Secretary with the flexibility to ensure that it is appropriate in all circumstances to renew the accreditation of a property and that there are no reasons to refuse the renewal. Such grounds may also be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Unlike approving an initial application for accreditation, which requires the Secretary to be satisfied that all requirements prescribed by the rules for the purposes of subclause 79(3) of the Bill have been met, subclause 84(2) will only require the Secretary to consider whether there is evidence of non-compliance as grounds for refusing the request to renew. This approach will ensure that accreditations will only be renewed in circumstances where there is a history of compliance by the manager, where the requirements and conditions of the accreditation have been complied with, and where there are no outstanding financial liabilities.
A note will be included at the end of subclause 84(2) that will refer the reader to clause 431 of the Bill which will provide that a relevant Commonwealth liability of a person is taken to be have been paid in certain circumstances.

If the Secretary renews the accreditation of the property, subclause 84(3) will provide that the Secretary may set an expiry date for the accreditation if it is appropriate. Two notes will be included at the end of subclause 84(3). Note 1 will advise the reader that, if there is no expiry date for the accreditation of a property, the accreditation remains in force unless it is revoked in accordance with subclause 82(1) of the Bill. Note 2 will advise the reader that a decision to set an expiry date for the accreditation of a property under subclause 84(3) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 84(4) will provide that the Secretary may set an expiry date for the renewed accreditation of the property under subclause 84(3) even if rules made for the purposes of subclause 82(5) apply in relation to the accreditation. For example, rules made for the purposes of 82(5) may provide an expiry date for accreditation of a property as ten years from the date of registration. This would not prevent the Secretary from setting a different expiry date for the renewed accreditation under subclause 84(4), if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for a specific renewal application, even if rules are made setting an expiry date for accredited properties.

**Clause 85 Conditions of renewed accreditation**

As with the initial approval of an accreditation (see clause 80 of the Bill), clause 85 will provide that, if the Secretary renews the accreditation of a property, the accreditation will be subject to:

- the conditions that will be provided by the Bill;
- the conditions that will be prescribed by the rules (other than those conditions that the Secretary decides are not to apply to a particular renewal). The conditions that are not to apply to a particular renewal must be set out in the notice of decision given to the applicant under clause 86 of the Bill; and
- any additional conditions that the Secretary considers are appropriate for the accreditation under consideration. These additional conditions must be set out in the notice of decision given to the applicant under clause 86 of the Bill.

Enabling the rules made under clause 432 of the Bill to prescribe the conditions that must be complied with after an accreditation is renewed will provide the Secretary with the flexibility to determine the conditions that are necessary and appropriate for a certain type of accredited property. This may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers appropriate for the accredited property under consideration will give the Secretary flexibility to determine additional conditions on a case-by-case basis. Imposing any additional conditions will also be necessary to ensure that the accreditation will be suitable for the export operations it will cover and that it will meet the requirements of the Bill.

The ability to impose conditions in the rules or by written notice is necessary to ensure that the export operations carried out at the renewed accredited property will meet the
requirements of the Bill. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Four notes will be included at the end of clause 85. Note 1 will refer the reader to clause 106 of the Bill, which will provide that the manager of an accredited property may commit an offence or be liable to a civil penalty if a condition of the accreditation is contravened. Note 2 will refer the reader to clauses 94 and 102 of the Bill, which will provide that the accreditation of a property may be suspended or revoked if a condition of the accreditation is contravened. Note 3 will advise the reader that a decision to renew the accreditation of a property subject to additional conditions under clause 85 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to Part 7 of Chapter 3 of the Bill, which will set out additional obligations of the manager of an accredited property.

**Clause 86 Notice of decision**

Clause 86 will provide that, if the accreditation of a property is renewed, then the Secretary must give the applicant a written notice that sets out the information specified in clause 81 of the Bill. Providing a notice under this clause will inform the manager of the Secretary’s decision to renew the accreditation, as well as the terms under which the renewal will be made.

**PART 4—VARIATION OF ACCREDITATION**

**Division 1—Application by manager**

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

Clause 87 will allow a manager to apply to the Secretary to vary the accreditation of a property. This will include approval to vary an accreditation so that it covers an alteration to the property, such as an alteration to the physical premises. This will enable the Secretary to respond to the changing needs and requirements of the manager and allow a flexible approach to the regulation of accredited properties.

Subclause 87(1) will provide that the manager of an accredited property may apply to the Secretary to:

- vary the accreditation of a property in relation to kinds of export operations, kinds of prescribed goods and, if applicable, places to which goods may be exported;
- approve a variation of the accreditation so that it covers:
  - an alteration to the property (being an alteration prescribed by the rules);
  - the carrying out of export operations on an additional part of the property, or on another property, in circumstances prescribed by the rules;
- to vary the conditions of the accreditation;
- to vary the particulars relating to the accreditation to make a minor change to a matter (including to correct a minor or technical error); or
- to vary any other aspect of the accreditation.

An example will be included at the end of subclause 87(1) to assist the reader in relation to what kind of matters may fall within ‘any other aspect of the accreditation’. The example will note that a variation may be needed to change the name of a person who manages or controls, or who will manage or control, export operations covered by the accreditation.
Enabling the rules made under clause 432 of the Bill to prescribe the kind of alterations that will require approval, and the circumstances in which the carrying out of export operations on an additional part of the property will require approval, will provide the Secretary with the flexibility to determine when an approval is necessary and appropriate. This may be specific to a kind of prescribed goods, kind of export operations or place of export. Clause 89 of the Bill will set out additional matters in relation to variations that must not be made without approval.

A note will be included at the end of subclause 87(1) that will refer the reader to clause 377 of the Bill, which will set out the general requirements for applications under the Bill, including applications for variation of the accreditation of a property or for approval of an alteration of a property. The note will also provide that a single application may be made to approve a variation of an accredited property under clause 87 as well as to renew the accreditation of a property under clause 83 of the Bill.

Subclause 87(2) will provide that, on receiving an application under subclause 87(1), the Secretary must decide either to make the variation or give the approval, or to refuse to make the variation or give the approval.

Three notes will be included at the end of subclause 87(2). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications to vary an accreditation.

Note 2 will refer the reader to subclause 379(2) of the Bill, which will provide that, if the Secretary does not make a decision within the consideration period, the Secretary is taken to have refused the application at the end of that period. Subclause 379(3) of the Bill will provide that the consideration period will be prescribed by the rules. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.

Note 3 will advise the reader that a decision to refuse to make the variation or give approval for the alteration of the property under subclause 87(2) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 87(3) will provide that the Secretary may make the variation, or give the approval, if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the requirements of the rules made for the purposes of subclause 79(2)(b) of the Bill, and any other requirements prescribed by the rules would be met if the variation were made or the approval were given.

Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before an accreditation may be varied or altered may be necessary and appropriate for the type of variation under consideration and will provide the Secretary with the flexibility to specify matters that may be relevant to, for example, a kind of prescribed goods, kind of export operations or place of export.
Clause 88  Notice of variation or approval of alteration

Subclause 88(1) will provide that if the Secretary makes a variation or gives an approval under paragraph 87(2)(a) of the Bill, then the Secretary must give the manager of the property a written notice of the variation or approval.

Subclause 88(2) will provide that the notice must include the following information:

- details of the variation or approval;
- the varied conditions of the accreditation (if the variation will be to the conditions of the accreditation);
- the date the variation or approval takes effect; and
- any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the written notice will provide the Secretary with the flexibility to ensure that the manager of the accredited property will receive all relevant information in relation to the variation or alteration.

Providing a notice under this clause will inform the manager of the Secretary’s decision to make a variation or give an approval, as well as the terms under which the variation or approval will be given.

A note will be included at the end of clause 88 that will clarify that the period of accreditation, as varied, will remain in force as provided by clause 82 of the Bill.

Clause 89  Certain variations must not be made unless approved

Prescribed alteration of property

Subclause 89(1) will provide that the manager of an accredited property must not make an alteration of the property if it is a kind prescribed by the rules made for the purposes of subparagraph 87(1)(b)(i) unless the alteration has been approved under subclause 87(2) of the Bill and the Secretary has given the manager notice of the approval under clause 88 of the Bill.

A note will be included at the end of subclause 89(1) to refer the reader to paragraphs 94(1)(g) and 102(1)(g) of the Bill, which will respectively provide that the Secretary may suspend or revoke the accreditation of the property if the manager contravenes subclause 89(1).

Carrying out export operations on additional part of property

Subclause 89(2) will provide that the manager of an accredited property must not carry out export operations in relation a kind of prescribed goods on an additional part of the property, or on another property, in the circumstances prescribed by the rules made for the purpose of subparagraph 87(1)(b)(ii), unless the export operations carried out on the additional part of the property, or on the other property, has been approved under subclause 87(2) of the Bill and the Secretary has given the manager notice of the approval under clause 88 of the Bill.

A note will be included at the end of subclause 89(2) that will refer the reader to paragraphs 94(1)(g) and 102(1)(g) of the Bill, which will respectively provide that the
Secretary may suspend or revoke the accreditation of the property if the manager contravenes subclause 89(2).

**Division 2—Variation by Secretary**

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

Clause 90 will enable the Secretary to vary the accreditation, the conditions of the accreditation, or the expiry date of an accreditation on the Secretary’s own initiative—that is, without having received an application to vary the accreditation by the manager under clause 87 of the Bill. This will be an important safeguard if, for example, a matter is brought to the attention of the Secretary that will affect the accreditation and will necessitate a variation initiated by the Secretary.

Subclause 90(1) will provide that the Secretary may do any of the following in relation to the accreditation of a property:

- vary any aspect of the accreditation, including so that it does not cover a kind of export operations, a kind of prescribed goods, or (if applicable) a place to which goods may be exported;
- vary the conditions of the accreditation (including by imposing new conditions);
- if there is no expiry date for the accreditation—vary the accreditation by setting an expiry date for the accreditation;
- if there is an expiry date for the accreditation (whether under paragraph 82(4)(a) or 82(4)(b)—vary the accreditation by setting a different expiry date for the accreditation;
- if there is an expiry date for the accreditation under paragraph 82(4)(b)—vary the accreditation revoking that expiry date.

Two notes will be included at the end of subclause 90(1). Note 1 will advise the reader that the if the Secretary revokes the expiry date for the accreditation under paragraph 90(1)(e), the accreditation will remain in force: if rules made for the purposes of subclause 82(5) apply in relation to the accreditation—for the period prescribed by the rules; or if there are no such rules—indefinitely (unless it is revoked). Note 2 will advise the reader that certain decisions made under subclause 90(1) will be reviewable decisions, and will refer the reader to Part 2 of Chapter 11 of the Bill. Clause 381 of the Bill will provide that only decisions made under paragraphs 90(1)(a) (varying an aspect of the accreditation), 90(1)(b) (varying or adding new conditions) and 90(1)(c) (setting an expiry date) and paragraph 90(1)(d) (setting a different expiry date) are reviewable. These decisions are reviewable as they may impact on the interests of the manager.

A decision made under paragraph 90(1)(e) (varying the accreditation by revoking the expiry date) is not a reviewable decision as it will benefit the manager of the accredited property as the accreditation will remain in force, but without an expiry date.

Subclause 90(2) will provide that the Secretary may only make a variation or set an earlier expiry date under subclause 90(1) if the Secretary reasonably believes that:

- the requirements prescribed by rules made for the purposes of subclause 79(2)(b) of the Bill are no longer being met; or
- a condition of the accreditation has been, or is being, contravened; or
it is necessary to do so to take account of an event notified under clause 108 of the Bill or to correct a minor or technical error; or
• the accreditation needs to be varied for any other reason prescribed by the rules.

The Secretary will be required to reasonably believe that one or more of the grounds set out in subclause 90(2) exists before taking action under that subclause. This standard will require the Secretary’s belief to be based upon objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the standards for making a variation to the accreditation of a property under existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe other reasons provides the Secretary with the flexibility to determine additional grounds on which it is appropriate or necessary to vary, or set an earlier expiry date on, an accreditation. Such grounds may need to be specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that grounds may need to change from time to time and will need to commence at short notice.

Notice of certain proposed variations

Subclause 90(3) will provide that the Secretary must not make a variation or set an earlier expiry date for the accreditation under subclause 90(1) unless the Secretary has given a written notice to the manager of the property in accordance with subclause 90(4).

Clause 90(4) will provide that the written notice must:
• specify each proposed variation and the grounds for each proposed variation; and
• subject to subclause 90(5), request the manager of the property to give the Secretary, within 14 days after the day that the notice was given, a written statement setting out why the proposed variation should not be made; and
• include a statement that the manager has the right to seek review of the decision to make the proposed variation.

Subclause 90(5) will provide that, if the Secretary reasonably believes that the grounds for varying the accreditation are serious and urgent, then the Secretary will not be required to include the request set out in paragraph 90(4)(c) in the notice given under 90(3). However, the notice of proposed variation must still be given. Subclause 90(5) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed variation, the Secretary must give a notice of variation in accordance with clause 91 of the Bill. A decision to make the variation will remain a reviewable decision.

Clause 91 Notice of variation

Subclause 91(1) will provide that, if the Secretary makes a variation in relation to the accreditation of a property under subclause 90(1) of the Bill, the Secretary must give the manager of the property a written notice of the variation. The purpose of a notice under this clause is to inform the manager of the accredited property of the Secretary’s decision to approve the variation, as well as the terms under which the variation is given.

Subclause 91(2) will provide that the notice must state:
• details of the variation;
• if the variation is of the conditions of the accreditation—the varied conditions and any new conditions;
• if the variation affects the period of effect of the accreditation:
  o the expiry date for the accreditation under paragraph 82(4)(a) or 82(4)(b) (whichever applies) or
  o if there is no expiry date for the accreditation—that the accreditation remains in force unless it is revoked;
• the date the variation takes effect; and
• any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the notice of variation will provide the Secretary with the flexibility to ensure that the manager of the property will receive all relevant information in relation to the variation.

Subclause 91(3) will provide that, if a notice (a show cause notice) was given under paragraph 90(3) of the Bill, that included the request referred to in paragraph 90(4)(c) of the Bill the variation must not take effect until the day after any response by the manager is received or the end of the 14 day period after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to implement the variation during the 14 day period. If the manager does not respond within the 14 day period, the variation will be able to be made. If the manager responds within the 14 day period, the Secretary will be required to consider the manager’s response when deciding whether to implement the variation.

A note will be included at the end of subclause 91(3) that will advise the reader that the accreditation, as varied, remains in force as provided by clause 82 of the Bill.

PART 5—SUSPENSION OF ACCREDITATION

Division 1—Suspension requested by manager

Clause 92 Manager may request suspension

Subclause 92(1) will provide that, subject to subclause 92(2), the manager of an accredited property may request the Secretary to suspend the accreditation of a property in relation to a kind of export operations, a kind of prescribed goods and (if applicable) a place to which goods may be exported.

Subclause 92(2) will provide that a request under subclause 92(1) to suspend the accreditation of a property may only be made only in the circumstances prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe when a request may be made provides the Secretary with the flexibility to determine the appropriate circumstances in which the manager of an accredited property may be able to request voluntary suspension of the accreditation. This may be specific to a kind of prescribed goods, kind of export operations or place of export.

Subclause 92(3) will provide that the request to suspend the accreditation under subclause 92(1) may relate to more than one kind of export operation, kind of prescribed goods or places to which goods may be exported. For example, a property could be accredited
to carry out export operations in relation to all fruit. If the market changes for the export of summer fruits, the manager may request suspension in relation to export operations carried out in relation to summer fruits.

Subclause 92(4) will require the request under subclause 92(1) to be in writing and to:

- state each kind of export operations, prescribed goods and (if applicable) each place in relation to which the accreditation is to be suspended;
- specify the reason for the suspension; and
- include any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe other information will provide the Secretary with flexibility to determine additional information that is required in order for the Secretary to consider the request to suspend the accreditation.

The written request is intended to inform the Secretary of the basis for the request. This information will also be relevant to the Secretary’s consideration of a request to revoke a suspension under clause 93 of the Bill in that the Secretary will consider whether the reasons for requesting the suspension no longer exist, before agreeing to revoke a suspension.

Subclause 92(5) will provide that if the Secretary receives a request from the manager of an accredited property in accordance with subclause 92(1), the Secretary must, by written notice to the manager, suspend the accreditation as requested, with effect on the day specified in the notice.

Clause 93 Request to revoke suspension

Subclause 93(1) will provide that, if an accreditation is suspended under clause 92 of the Bill, the manager of the property may request, in the manner set out in subclause 93(2), that the suspension be revoked.

Clause 93(2) will provide that the request must be in writing, state the reason for the request and include any other information prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe other information will provide the Secretary with the flexibility to determine the additional information that is required in order to make an informed decision about whether to revoke a suspension. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Paragraph 93(3)(a) will provide that, if the Secretary receives a request under subclause 93(1) of the Bill, the Secretary may revoke the suspension by written notice if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked.

Paragraph 93(3)(b) will provide that, if the Secretary does not revoke the suspension under paragraph 93(3)(a), the Secretary may suspend the accreditation under Division 2 of Part 5 of Chapter 3 of the Bill, or revoke the accreditation under Division 2 of Part 6 of Chapter 3 of the Bill.
A note will be included at the end of subclause 93(3) that will advise the reader that a decision to suspend or revoke the accreditation of a property will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

However, a decision to refuse to revoke a suspension is not a reviewable decision. This is because, if the manager requests the revocation of the suspension, the Secretary will only have three choices:

- agree to revoke the suspension (in which case there will be no requirement for a review of the decision); or
- suspend the accreditation; or
- revoke the accreditation.

**Division 2—Suspension by Secretary**

**Clause 94 Grounds for suspension—general**

Clause 94 will set out a number of grounds upon which the Secretary may suspend some or all of the matters covered by an accreditation. This will mean that an accreditation may not be suspended in its entirety if the Secretary is satisfied that some aspects of the accreditation can continue irrespective of the suspension of other aspects. Written notice of the proposed suspension must be given prior to suspension. The ability to suspend the accreditation of a property may be necessary in a range of circumstances.

Subclause 94(1) will provide that the Secretary may suspend the accreditation of a property in relation to one or more kinds of export operations, and one or more kinds of prescribed goods, and (if applicable) one or more places of export, if the Secretary reasonably believes any of the following:

- the integrity of a kind of prescribed goods covered by the accreditation cannot be ensured;
- a requirement prescribed by rules made for the purposes of subclause 79(2)(b) of the Bill is no longer met;
- a condition of the accreditation has been, or is being, contravened;
- the manager of the property failed to:
  - comply with a direction given by an authorised officer or the Secretary; or
  - comply with a request by an authorised officer to provide information or a document;
  - provide facilities and assistance to an auditor as required under clause 271 of the Bill or failed to comply with a request made by an auditor under clause 272 of the Bill;
- the manager of the property has engaged in conduct that intimidated a person or hindered or prevented a person from performing functions or exercising powers under the Bill;
- the manager of the property, or any other person who manages or controls export operations carried out at the property:
  - made a false, misleading or incomplete statement in an application made under Chapter 3 of the Bill; or
  - gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
The Secretary will be required to reasonably believe that one or more grounds set out in subclause 94(1) exists before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the standards for suspending the accreditation of a property under existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe other grounds provides the Secretary with the flexibility to determine additional grounds on which it is appropriate or necessary to suspend an accreditation. Such grounds may need to be specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that grounds may need to change from time to time and will need to commence at short notice.

Subparagraph 94(1)(d)(i) will provide that the Secretary may suspend the accreditation of a property if the manager fails to comply with a direction given by an authorised officer or the Secretary. Contravening a direction from an authorised officer or the Secretary is a serious act. It may compromise export operations that are taking place at the accredited property (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response. This subparagraph will be important to ensuring that the effectiveness of the regulatory framework is maintained by providing the Secretary with the ability to suspend export operations on the basis of a contravention of a direction by an authorised officer or the Secretary.

Two notes will be included at the end of subclause 94(1). Note 1 will refer the reader to clause 97 of the Bill, which will provide that a suspension of an accreditation of a property must not be for more than 12 months. Note 2 will advise the reader that a decision to suspend the accreditation of a property under subclause 94(1) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subparagraph 94(1)(e)(i) will provide that the Secretary may suspend the accreditation of a property if the Secretary reasonably believes that the manager intimidated a person performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person. Engaging in such conduct is a serious act. Such conduct may also amount to an offence under 149.1 of the Criminal Code (obstruction of Commonwealth public officials). Such conduct may also compromise export operations that are taking place at the accredited property (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.
Notice of proposed suspension

Subclause 94(2) will provide that the Secretary must not suspend an accreditation under subclause 94(1) unless the Secretary has given a written notice to the manager of the property in accordance with subclause 94(3).

Subclause 94(3) will provide that the written notice must:

- specify each kind of export operations, prescribed goods and (if applicable) each place in relation to which the accreditation is proposed to be suspended, and the grounds for the proposed suspension;
- subject to subclause 94(4) of the Bill, request the manager of the property to give the Secretary, within 14 days after the day that the notice was given, a written statement setting out why the accreditation should not be suspended; and
- include a statement that the manager has the right to seek review of the decision to suspend the accreditation as proposed.

Subclause 94(4) will provide that, if the Secretary reasonably believes that the grounds for the suspension are serious and urgent, then the Secretary will not be required to include the request in paragraph 94(3)(c) in the notice issued under subclause 94(2). However, the notice of proposed suspension must still be given. Subclause 94(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed suspension, the Secretary must give a notice of suspension in accordance with clause 96 of the Bill. A decision to suspend the accreditation will remain a reviewable decision.

For example, if the proposed suspension is because the manager of the property has engaged in conduct that intimidated an authorised officer performing functions or exercising powers under the Bill, or hindered or prevented an authorised officer from performing functions or exercising powers under the Bill, the suspension may be made without the provision of a show cause notice.

Clause 95  Grounds for suspension—overdue relevant Commonwealth liability

Clause 95 will provide that an overdue liability to the Commonwealth will be a ground for suspending an accreditation. This clause is intended to ensure timely payment of liabilities that are due and to prevent further debts to the Commonwealth from being incurred.

Notice of proposed suspension

Subclause 95(1) will provide that the Secretary may suspend an accreditation if:

- a relevant Commonwealth liability of the manager of the property, or relating to the property, is more than 30 days overdue; and
- the Secretary has given a written notice (in accordance with subclause 95(2)) to the person (the debtor) who is liable to pay the relevant Commonwealth liability; and
- within eight days after the notice is given:
  - the relevant Commonwealth liability has not been paid; or
  - the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.
Paragraph 95(1)(b) will refer to the debtor, and not the manager of the property, as the debt may be the responsibility of someone else but nevertheless relate to the property (see paragraph 95(1)(a)).

Unlike a suspension of an accreditation under clause 94 of the Bill, a suspension of an accreditation under clause 95 will be a full suspension of the accreditation and cannot be in relation to only some of the matters covered by the accreditation (see clause 94(1) of the Bill). This will be necessary as the overdue relevant Commonwealth liability impacts on the whole accreditation and not just parts thereof.

Three notes will be included at the end of subclause 95(1). Note 1 will refer the reader to clause 97 of the Bill, which will provide that a suspension of an accreditation of a property must not be for more than 12 months. Note 2 will advise the reader that a decision to suspend the accreditation of a property under clause 95(1) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will refer to the reader to clause 103 of the Bill, and clarify that if the Secretary suspends the accreditation of a property under clause 95, the Secretary may revoke the accreditation of the property in certain circumstances, including in relation to an overdue Commonwealth liability.

Subclause 95(2) will provide that the written notice under subclause 95(1) must:

- state that a relevant Commonwealth liability of the debtor in relation to an accredited property is more than 30 days overdue; and
- state that the Secretary may suspend the accreditation of the property in relation to all kinds of export operations and all kinds of prescribed goods if, within eight days after the notice was given, the relevant Commonwealth liability is not paid or the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability; and
- include a statement that the debtor has the right to seek review of the decision to suspend the accreditation.

*Secretary may direct that activities not be carried out*

Subclause 95(3) will provide that, if the Secretary suspends the accreditation under subclause 95(1), the Secretary may also refuse to carry out, or direct a person (for example, an authorised officer) not to carry out, specified activities or kind of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid. This will have the effect of encouraging the debtor to pay the relevant Commonwealth liability so that they will be able to continue exporting goods.

A note will be included at the end of subclause 95(3) that will direct the reader to clause 309 of the Bill, which will deal with general provisions that relate to directions.

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

Subclause 95(4) will provide that any action taken by the Secretary under clause 95 does not remove the liability of the debtor to pay the relevant Commonwealth liability. This will mean that, for example, if the Secretary suspends an accreditation under clause 95(1) because a manager had an overdue relevant Commonwealth liability, the manager would still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.
Clause 96  Notice of suspension

Subclause 96(1) will provide that, if the Secretary decides to suspend an accreditation under Division 2 of Part 5 of Chapter 3 of the Bill (see clauses 94 and 95 of the Bill), the Secretary must give the manager of the property a written notice of the suspension.

Subclause 96(1) will provide that the written notice must include:

- a statement that the accreditation is to be suspended for the period specified in the notice in relation to all or specified kind of export operations, prescribed goods and, if applicable, places to which goods may be exported;
- the reasons for the suspension;
- the date the suspension will start;
- the period of the suspension.

Subclause 96(2) will provide that, if a notice (a show cause notice) was given under subclause 94(2) of the Bill, that included the request referred to in paragraph 94(3)(c) of the Bill, the suspension must not start until the date after any response by the manager is received or the end of the 14 day period after the show cause notice was given, whichever will be earlier. The effect of this is that the Secretary will be prevented from taking any action to suspend the accreditation during the 14 day period. If the manager does not respond within the 14 day period, then the suspension will be able to be implemented. If the manager responds within the 14 day period, the Secretary will be required to consider the manager’s response when deciding whether to implement the suspension.

Clause 97  Period of suspension

Subclause 97(1) will provide that the suspension of the accreditation under Division 2 of Part 5 of Chapter 3 of the Bill (see clauses 94, 95 and 96 of the Bill) must not be for more than 12 months. This will provide certainty to the manager of the accreditation about the period of suspension and prevent an accreditation from being suspended indefinitely. It is intended that the matters that necessitated the suspension will be resolved in 12 months or less. Otherwise, the Secretary will have the option of revoking the accreditation.

Subclause 97(2) will provide that the Secretary may vary the period of a suspension by written notice to the manager of a property. However, the total period of suspension must not be for more than 12 months. A note will be included at the end of clause 97 that will advise the reader that a decision to extend the period of a suspension property under subclause 97(2) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

If the reason for the suspension warrants a longer period of suspension, then the Secretary may revoke the accreditation under Division 2 of Part 6 of Chapter 3 of the Bill instead, provided that the relevant provisions in the Bill are satisfied (see Division 2 of Part 6 of Chapter 3 of the Bill).

Clause 98  Revocation of suspension

A suspension need not remain in place for the entire period set out under paragraph 96(1)(d) of the Bill. Clause 98 will provide that the Secretary may revoke a suspension made under Division 2 of Part 5 of Chapter 3 of the Bill (see clauses 94 and 95 of the Bill) by written notice to the manager of a property. Revocation of a suspension may occur, for example, in
circumstances where the Secretary will be satisfied that the grounds for the suspension no longer exist or have been rectified.

**Division 3—Other provisions**

**Clause 99  Effect of suspension**

Clause 99 will provide that the effect of a suspension is that the accreditation will remain in force and the requirements of the Bill in relation to that accreditation will continue to apply (unless the rules made under clause 432 of the Bill say otherwise). This will allow, for example, activities such as an audit to be undertaken while the suspension is in place for the purpose of determining compliance with requirements of the Bill.

Subclause 99(1) will provide that if the accreditation of a property is suspended wholly or in part under Division 1 or 2 of Part 5 of Chapter 3 of the Bill, or under rules made for the purposes of subclause 109(3), the accreditation of the property remains in force while it is suspended, and the requirements of the Bill in relation to the accreditation (including the conditions of the accreditation) must be complied with while the accreditation is suspended.

Subclause 99(2) will provide that the rules may prescribe requirements of the Bill (including conditions of the accreditation) that will not apply during the period of suspension. The effect of this will be that the default position is that all requirements of the Bill, such as the requirement to be audited or to comply with a direction of an authorised officer and conditions of the accreditation, will continue to apply unless the rules provide otherwise.

Enabling the rules made under clause 432 of the Bill to prescribe the requirements of the Bill, including conditions of the accreditation, that will not apply during the period of suspension will provide the Secretary with the flexibility to reduce the regulatory burden on the manager of an accredited property. This will also allow the requirements that do not apply during a period of suspension to be specific to a kind of prescribed goods, kind of export operations, or places of export.

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

Clause 100 will provide that penalties may be imposed in circumstances where export operations are carried out while an accreditation is suspended.

Subclause 100(1) will provide that a manager of an accredited property will contravene subclause 100(1) if:

- the manager was given a notice of suspension in relation to the accreditation of the property under subclauses 92(5) or 96(1) of the Bill; and
- export operations in relation to which the accreditation was suspended were carried out at the property while the accreditation was suspended.

A note will be included at the end of subclause 100(1) that will advise the reader that the physical elements of the offence against subclause 100(2) are set out in subclause 100(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 100(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 100(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 100(2) will be 600 penalty units.

Subclause 100(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 100(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 100(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 100(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 100(3) is twice as high as the penalty available for the criminal offence. This is to ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision also reflect the seriousness of conducting export operations after an accreditation has been suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 6—REVOCATION OF ACCREDITATION

Division 1—Revocation requested by manager

Clause 101 Manager may request revocation

Subclause 101(1) will provide that the manager of an accredited property may request the Secretary to revoke the accreditation of the property. This includes the accreditation of a property that is suspended under Part 5 of Chapter 3 of the Bill.

A note will be included at the end of subclause 101(1) that will clarify that if the manager does not wish to revoke the accreditation in relation to all kinds of export operations and prescribed goods, the manager may apply to vary the accreditation under Division 1 of Part 4 of Chapter 3 of the Bill. This will allow the manager of the property to apply to vary aspects of the accreditation including the kinds of export operations, the kinds of prescribed goods and the places to which goods are to be exported.

Subclause 101(2) will require the request under subclause 101(1) to be in writing, and include the information (if any) prescribed by the rules made under clause 432 of the Bill. Enabling the rules to set out any other information that must be included in a request for revocation will provide the Secretary with the flexibility to ensure that all relevant information is included in
the application so that the Secretary will be able to make an informed decision about the requested revocation.

Subclause 101(3) will provide that if the Secretary receives a request under subclause 101(1), the Secretary must, by written notice to the manager, revoke the accreditation with effect on the day specified in the notice.

However, subclause 101(4) will provide that the Secretary does not have to revoke the accreditation if, before the manager made the request under subclause 101(1), the Secretary had given the manager a notice under subclause 102(2) of the Bill proposing to revoke the accreditation and the Secretary had not decided whether to revoke the accreditation.

In these circumstances, the Secretary will not be required to agree to a request to revoke the accreditation under subclause 101(1). This is intended to ensure that the Secretary considers the matters as set out in subclause 102(1) of the Bill before accepting the request to revoke the accreditation. Consideration of these matters may for example, establish whether the manager has committed an offence or is liable for a civil penalty for contravening a condition of the accreditation or determine the required action after the accreditation has been revoked (see clause 105 of the Bill).

**Division 2— Revocation by Secretary**

**Clause 102  Grounds for revocation—general**

The ability to revoke an accreditation may be necessary in a range of circumstances, including where the Secretary reasonably believes that the integrity of the prescribed goods cannot be ensured, that prescribed requirements or conditions will not be met, or in relation to certain conduct by the manager of the property, such as a failure to comply with a direction.

The revocation of an accreditation will be of the whole accreditation and cannot be in relation to only some of the matters covered by the accreditation. This reflects the likely seriousness of the circumstances necessitating a revocation by the Secretary, which cannot be dealt with by other means such as a varying or suspending the accreditation.

There are a number of grounds upon which the Secretary may revoke an accreditation (including an accreditation that is suspended under Part 5 of Chapter 3 of the Bill). These grounds will be set out in subclause 102(1). These are the same grounds as the grounds for suspension in subclause 95(1) of the Bill.

Subclause 102(1) will provide that the Secretary may revoke an accreditation if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by the accreditation cannot be ensured;
- a requirement prescribed by rules for the purposes of subclause 79(2)(b) of the Bill is no longer met;
- a condition of the accreditation has been, or will be contravened;
- the manager of the property:
  - failed to comply with a direction given by an authorised officer or the Secretary; or
  - failed to comply with a request by an authorised officer to provide information or documents; or
• failed to provide facilities and assistance to an auditor as required under clause 271 of the Bill or failed to comply with a request made by an auditor under clause 272 of the Bill;

• the manager of the property or any other person who manages or controls export operations carried out at the property:
  o made a false, misleading or incomplete statement in an application under Chapter 3 of the Bill; or
  o gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
  o gave false or misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;

• the manager of the property has contravened a requirement of the Bill in relation to the accreditation of the property;

• a ground prescribed by the rules exists.

The Secretary will be required to reasonably believe that one or more grounds set out in subclause 102(1) exists before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standards for revoking the accreditation of a property under existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe any additional grounds on which the accreditation may be revoked will provide the Secretary with the flexibility to address the wide range of matters that relate to an accreditation and that might impact on the suitability of the accreditation, thereby necessitating the revocation of the accreditation. It will also enable the basis for a revocation to be specific to a kind of prescribed goods, kind of export operations, or place of export. It also reflects the likelihood that grounds may need to change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 102(1) that will advise the reader that a decision to revoke the accreditation of a property will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subparagraph 102(1)(e)(i) will provide that the Secretary may revoke the accreditation of a property if the Secretary reasonably believes that the manager intimidated a person performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person. Engaging in such conduct is a serious act. It may compromise export operations that are taking place at the accredited property (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.

Notice of proposed revocation

Subclause 102(2) will provide that the Secretary must not revoke an accreditation under clause 102(1) unless the Secretary has given a written notice to the manager of the property in accordance with subclause 102(3).
Subclause 102(3) will provide that the written notice must:

- specify the grounds for the proposed revocation; and
- subject to subclause 102(4), request the manager of the property to give the Secretary, within 14 days after the day that the notice was given, a written statement setting out why the accreditation should not be revoked; and
- include a statement that the manager has the right to seek review of the decision to revoke the accreditation.

Subclause 102(4) will provide that, if the Secretary reasonably believes that the grounds for the revocation are serious and urgent, then the Secretary will not be required to include the request in paragraph 102(3)(b) in the notice given under subclause 102(2). Subclause 102(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. However, the notice of proposed revocation must still be given. In addition to the notice of proposed revocation, the Secretary must give a notice of revocation in accordance with clause 104 of the Bill. A decision to revoke the accreditation will be a reviewable decision.

Clause 103 Grounds for revocation—overdue relevant Commonwealth liability

Clause 103 will provide that an overdue liability to the Commonwealth will be grounds for revoking an accreditation. This clause is intended to ensure timely payment of liabilities that are due and to prevent further debts to the Commonwealth from being incurred.

Subclause 103(1) will provide that the Secretary may revoke an accreditation if:

- the accreditation was suspended under clause 95(1) of the Bill for non-payment of a relevant Commonwealth liability; and
- within 90 days after the start of the suspension, the relevant Commonwealth liability has not been paid or the person (the debtor) has not entered into an arrangement with the Secretary to pay the relevant commonwealth liability.

Subparagraph 103(1)(b)(ii) will refer to the debtor, and not the manager of the property, as the debt may be the responsibility of someone else but nevertheless relate to the property.

As with a revocation under clause 102 of the Bill, a revocation under clause 103 will be a full revocation of the accreditation and cannot be in relation to only some of the matters covered by the accreditation (see subclause 103(1)).

A note will be included at the end of subclause 103(1) that will advise the reader that a decision to revoke the accreditation of a property will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Secretary may direct that activities not be carried out

Subclause 103(2) will provide that, if the Secretary revokes the accreditation under subclause 103(1), the Secretary may also refuse to carry out or direct a person (for example, an authorised officer) not to carry out, specified activities or kinds of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid.

A note will be included at the end of subclause 103(2) that will refer the reader to clause 309 of the Bill, which deals with general provisions that relate to directions.
**Action under this section does not affect liability to pay relevant Commonwealth liability**

Subclause 103(3) will provide that any action taken by the Secretary under clause 103 does not affect the liability of the debtor to pay the relevant Commonwealth liability. This will mean that, for example, if the Secretary revokes an accreditation under subclause 103(1) because a manager has an overdue relevant Commonwealth liability, the manager will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

**Clause 104 Notice of revocation**

Subclause 104(1) will provide that, if the Secretary revokes an accreditation under Division 2 of Part 6 of Chapter 3 of the Bill (see clauses 102 and 103 of the Bill), the Secretary must give the manager of the property a written notice of the revocation. Subclause 104(1) will provide that the notice must state that the accreditation of the property will be revoked, the reasons for the revocation, and the date the revocation will take effect.

A note will be included at the end of subclause 104(1) that will provide that the notice must also state the matters referred to in clause 382 of the Bill.

Subclause 104(2) will provide that, if a notice (a show cause notice) was given under subclause 102(2) that included the information set out in paragraph 102(3)(b) of the Bill, the revocation must not take effect until the date after any response by the manager is received or the end of the 14 day period after the show cause notice was given, whichever will be earlier. The effect of this is that the Secretary will be prevented from taking any action to revoke the accreditation during the 14 day period. If the manager does not respond within the 14 day period, then the revocation will be able to be implemented. If the manager responds within the 14 day period, the Secretary will be required to consider the manager’s response when deciding whether to implement the revocation.

**Division 3—Other provisions**

**Clause 105 Secretary may require action to be taken after accreditation revoked**

Clause 105 will provide that penalties may be imposed in circumstances where export operations are carried out after an accreditation is revoked.

Subclause 105(1) will provide that clause 105 will apply if a person is given a notice of revocation under subclauses 101(3) or 104(1) of the Bill or the accreditation has been revoked under Division 1 or 2 of Part 6 of Chapter 3 of the Bill.

Subclause 105(2) will provide that the Secretary may, in writing, direct the person to take specified action, within a specified period after the accreditation is revoked, in relation to export operations and goods that were covered by the accreditation. The action must be action that is necessary for the purpose of achieving one or more requirements of the Bill.

Subclause 105(3) will provide that a direction under subclause 105(2) must state that, if the person does not comply with the direction, the person may commit an offence or be liable to a civil penalty. A note will be included at the end of subclause 105(3) to refer the reader to the general provision relating to directions that will be set out in clause 309 of the Bill.
Subclause 105(4) will provide that a person who is given a direction under subclause 105(2) must comply with that direction.

Subclause 105(5) will provide that a person will commit a fault-based offence if the person is given a direction under 105(2) and the person engages in conduct that contravenes the direction. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subclause 105(6) will provide that a person will be liable to a civil penalty if the person contravenes subclause 105(4). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 105(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 105(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 105(6) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of failing to comply with a direction of the Secretary in relation to export operations and goods that were covered by an accreditation that has been revoked. Conduct that contravenes the requirements that will be set out in this clause may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 7—OBLIGATIONS OF MANAGERS OF ACCREDITED PROPERTIES ETC.

Clause 106 Conditions of accreditation must not be contravened

Clause 106 will provide that penalties will be able to be imposed on the manager of an accredited property in certain circumstances where a condition of the accreditation is contravened, both when the accreditation is not suspended (see subclauses 106(1), (2) and (3)) and when the accreditation is suspended (see subclauses 106(4), (5) and (6)).

Accreditation that is not suspended

Subclause 106(1) will provide that a person will contravene subclause 106(1) if:

- the person is the manager of an accredited property; and
- the accreditation of the property is not suspended wholly or in part under Part 5 of Chapter 3 of the Bill; and
• the accreditation covers a kind of prescribed goods (the **relevant goods**) that may be exported:
  o generally; or
  o to one or more places; and
• the relevant goods are:
  o in the case of an accreditation referred to in subclause 106(1)(c)(i)—exported to any place; or
  o in the case of an accreditation referred to in subclause 106(1)(c)(ii)—exported to a place covered by the accreditation; and
• a condition of the accreditation relating to the relevant goods, or to export operations carried out in relation to the relevant goods, is contravened.

A note will be included at the end of subclause 106(1) that will provide that the physical elements of an offence against subclause 106(2) will be set out in subclause 106(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 106(2) will provide that the person will commit a fault-based offence if the person contravenes subclause 106(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 106(2) will be 600 penalty units.

Subclause 106(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 106(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 106(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 106(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

*Accreditation that is suspended*

Subclause 106(4) will provide that a manager of an accredited property will contravene subclause 106(4) if:
• the accreditation of the property is suspended wholly or in part under Part 5 of Chapter 3 of the Bill; and
• the accreditation covers a kind of prescribed goods (the **relevant goods**) that may be exported:
  o generally; or
  o to one or more places; and
• the relevant goods are exported:
  o in the case of an accreditation referred to in subclause 106(4)(c)(i)—exported to any place; or
  o in the case of an accreditation referred to in subclause 106(4)(c)(ii)—exported to a place covered by the accreditation; and
• a condition of the accreditation relating to the relevant goods, or to export operations carried out in relation to the relevant goods, is contravened; and
• the condition is required to be complied with during the period of the suspension.
A note will be included at the end of subclause 106(4) that will provide that the physical elements of an offence under subclause 106(5) will be set out in subclause 106(4). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 106(5) will provide that a person will commit a fault-based offence if the person contravenes subclause 106(4). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 106(4) will be 600 penalty units.

Subclause 106(6) will provide that a person will be liable to a civil penalty if the person contravenes subclause 106(4). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 106(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 106(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalties provided for in subclauses 106(3) and 106(6) will be twice as high as the penalties available for the criminal offences provided for in subclauses 106(2) and 106(5). The penalties are intended to act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offences and the civil penalty provisions in these clauses reflect the seriousness of failing to comply with the conditions of the accreditation, irrespective of whether the accreditation is, or is not, suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill and may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

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

Clause 107 will set out the circumstances in which a manager must provide the Secretary with additional or corrected information in relation to an application for accreditation.

Subclause 107(1) will require the manager of an accredited property to give the Secretary additional or corrected information in accordance with subclause 107(2) if:

- the manager becomes aware that information included in an application made by the manager under Chapter 3 of the Bill, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
- a change prescribed by the rules made under clause 432 of the Bill occurs.
However, subclause 107(2) only creates an obligation on the manager of the property to give the Secretary the additional or corrected information required under subclause 107(1) to the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to a matter covered by the accreditation of the property have been, are being, or will be complied with; or
- the importing country requirements relating to a matter covered by the accreditation of the property have been, are being, or will be met.

Subclause 107(2) will also require the manager to give the Secretary the additional or corrected information as soon as practicable. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis. It may be that a property was accredited in circumstances where, had the Secretary had the correct information, the property may not have been accredited.

Additional or corrected information that will not be relevant to that assessment will not need to be provided to the Secretary.

It is necessary for the Secretary to have the most up-to-date information to determine whether, for example, an accreditation should remain in place. Enabling the rules made under clause 432 of the Bill to prescribe circumstances that will necessitate the manager of an accredited property to provide additional or corrected information will provide the Secretary with the flexibility to accommodate the range of changes in relation to the accreditation. This will enable a proactive response by the Secretary to changes that will require additional or corrected information to be provided by the manager of the accredited property.

Three notes will be included at the end of subclause 107(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and sections 367, 368 and 369 of the Bill. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Note 2 will clarify that the Secretary may suspend or revoke the accreditation of the property if the manager fails to comply with subclause 107(2). It is intended that the Secretary could suspend or revoke the accreditation under paragraphs 94(1)(g) and 102(1)(g) of the Bill, in addition to any civil penalty imposed under subclause 107(3).

Note 3 will provide that clause 107 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to a permit and if necessary, can take immediate action. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill, and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 107(3) will provide that a person will contravene subclause 107(3) if:
the person is required to give information to the Secretary under subclause 107(2); and

the person fails to comply with the requirement.

Subclause 107(3) will provide that a person will be liable to a civil penalty if the person is required to give the Secretary information under subclause 107(2) and they fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to a person not providing the correct or additional information and to conduct that may impede the effective regulation of exports under the Bill. It will be necessary for the Secretary to have relevant and correct information to determine whether any action needs to be taken in relation to the accredited property. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

Clause 108 Notice of event or change in circumstances

Subclause 108(1) will require the manager of an accredited property to notify the Secretary in writing as soon as practicable after an event or circumstance prescribed by the rules occurs.

It is necessary for the Secretary to be notified of changes so the Secretary can determine whether, for example, it is appropriate to allow the accreditation of the property to continue. The provision of information may lead the Secretary to take certain action, such as suspension or revocation of an accreditation. Enabling the rules made under clause 432 of the Bill to prescribe the circumstances or events that would require the manager of an accredited property to provide notification will provide the Secretary with the flexibility to identify the circumstance or events that may, for example, change a decision to accredit a property, or require a change to the conditions of the accreditation. Such changes may be specific to a kind of prescribed goods, kind of export operations or kind of prescribed goods. The ability to prescribe these changes also reflects the likelihood that they may need to change from time to time and will need to commence at short notice.

Subclause 108(2) will provide that a person will be liable to a civil penalty if:

- the person was required to notify the Secretary of an event or circumstance in accordance with subclause 108(1); and
- the person fails to comply with the requirement.

The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to the manager not providing the necessary information to the Secretary. It will be necessary for the Secretary to
be aware of events or changes to determine whether any action needs to be taken in relation to the accredited property. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill and may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

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

Clause 109 will deal with the requirement to notify the Secretary in circumstances where a person ceases to be the manager of an accredited property and sets a penalty for failing to do so.

Notice by former manager

Subclause 109(1) will provide that if the manager (the former manager) of an accredited property ceases to be the manager of the property, the former manager (or another person who will be legally authorised to act on behalf of the former manager) must, as soon as practicable after the cessation, notify the Secretary in writing of that fact. Subclause 109(1) will also provide that the notice must include contact details for the person giving the notice.

A note will be included at the end of subclause 109(1) that will advise the reader that if the manager of an accredited property ceases to be the manager of the property, the accreditation of the property may be taken to have been suspended under rules made for the purposes of subclause 109(3).

Enabling a person who will be legally authorised to act on behalf of the former manager to notify the Secretary of the cessation of the former manager as the manager of the accredited property is intended to cover the situation where the former manager is unable to provide the notification. This may be because of incapacity or death. In such circumstances, it is still necessary for the Secretary to be aware that the former manager is no longer the manager so that the necessary action, such as the action that is set out in subclause 109(4) may be taken in relation to the property.

Subclause 109(2) will provide that a person will be liable to a civil penalty if the person is required to notify the Secretary under subclause 109(1) that the manager of an accredited property has ceased to be the manager and they fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to a person not advising of the change in the manager of an accredited property. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
Rules may make provision in relation to accredited property that no longer has a manager or in relation to which manager has changed

Subclause 109(3) will provide that the rules may make provision for and in relation to the accreditation of a property that no longer has a manager or in relation to which there has been a change of manager.

Subclause 109(4) will provide examples of what the rules made for the purposes of subclause 109(3) may address. The rules may:

- provide that the accreditation of a property referred to in subclause 109(3) is suspended or revoked;
- prescribe requirements that must be complied with by any new manager of the property;
- make provision in relation to any other matters relating to the accreditation or any new manager.

Enabling the rules made under clause 432 of the Bill to prescribe provisions in relation to an accredited property that no longer has a manager will provide the Secretary with the flexibility to determine when it is appropriate to do so. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that the information required may need to change from time to time and will need to commence at short notice.

Chapter 4—Registered establishments

PART 1—INTRODUCTION

Clause 110  Simplified outline of this Chapter

Clause 110 will provide a simplified outline of Chapter 4 of the Bill. Chapter 4 of the Bill will provide for matters in relation to an application for the registration of an establishment, as well as the renewal, variation, suspension and revocation of a registration. Registered establishments are one of the regulatory controls provided for in the Bill that allow people in the export system to take some responsibility for meeting requirements while enabling the Secretary to have regulatory oversight of their export operations and activities. Provisions in this chapter will enable the Secretary to set requirements that must be met before an establishment becomes a registered establishment, and conditions in relation to certain matters covered by the registration. Chapter 4 will also enable the Secretary to direct the occupier of a registered establishment to cease carrying out a kind of export operations in relation to a kind of prescribed goods in certain circumstances. In addition, the occupier of a registered establishment must comply with certain obligations.

Other regulatory controls, such as accredited properties (Chapter 3), approved arrangements (Chapter 5) and export licences (Chapter 6), will be able to be used in conjunction with an approved arrangement to regulate other matters related to export operations in relation to prescribed goods.

The simplified outline is included to assist the reader to understand the substantive clauses of Chapter 4 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
PART 2—APPLICATION FOR REGISTRATION

Clause 111  Application for registration of establishment

Subclause 111(1) will enable the occupier of an establishment to apply to the Secretary to register the establishment for a kind of export operations in relation to a kind of prescribed goods.

Paragraph 111(2)(a) will provide that the application may relate to more than one kind of export operations and more than one kind of prescribed goods. For example, an establishment may be registered to produce all apples and oranges, as well as process, pack and store the fruit for export.

Paragraph 111(2)(b) will provide that the application may, but is not required to, specify one or more places to which the goods are to be exported. It will enable a particular market or markets to be included in the application for registration, but this will not be mandatory.

Two notes will be included at the end of subclause 111(2). Note 1 will advise the reader that the export of a kind of prescribed goods may be prohibited unless export operations in relation to the goods have been carried out at a registered establishment. Note 1 will also refer the reader to clause 29 of the Bill, and the rules made under clause 432 of the Bill for the purposes of clause 29 of the Bill. Note 2 will refer the reader to clause 377 of the Bill, which will set out the requirements for applications, including applications to register an establishment.

Clause 112  Secretary must decide whether to register establishment

Subclause 112(1) will provide that, on receiving an application under clause 111 of the Bill to register an establishment, the Secretary must decide either to register the establishment or to refuse to register the establishment.

Four notes will be included at the end of subclause 112(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications, including applications for the registration of an establishment. Clause 379 of the Bill will set out the Secretary’s powers in dealing with applications and the time within which a decision must be made.

Note 2 will clarify that if the application is to register an establishment to carry out more than one kind of export operations in relation to more than one kind of prescribed goods for export to more than one place, the Secretary may decide to register the establishment for one or more of those kinds of export operations, in relation to one or more of those kinds of goods, for export to one or more of those places. This is intended to make it clear that the Secretary will have discretion to register an establishment for any combination of export operations, prescribed goods or places of export.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period (which will be prescribed by the rules), the Secretary will be taken to have refused the application at the end of that period. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.
Note 4 will advise the reader that a decision to refuse to register an establishment under subclause 112(1) will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 112(2) will provide that the Secretary may register the establishment if the Secretary is satisfied that, having regard to any matter that the Secretary considers relevant, the following requirements are met:

- the occupier of the establishment is a fit and proper person (having regard to the matters referred to in clause 372 of the Bill);
- all relevant Commonwealth liabilities of the occupier of the establishment or relating to the establishment itself have been paid, or are taken to have been paid, or if they have not been paid, the non-payment is due to exceptional circumstances;
- the construction of the establishment and its equipment and facilities are suitable for carrying out export operations that would be covered by the registration (having regard to the matters prescribed by the rules);
- if the rules require export operations of that kind to be carried out in relation to goods of that kind in accordance with an approved arrangement—an approved arrangement covering that kind of export operations and that kind of goods is in force;
- if export operations, or other operations, are to be carried out in relation to different kinds of goods at the establishment—the operations are compatible with each other and will not have a detrimental effect on export operations to be carried out at the establishment; and
- any other requirement prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before an establishment will be registered will provide the Secretary with the flexibility to determine additional requirements that may be necessary to ensure that it is appropriate in all the circumstances to register the establishment and that there are no reasons to refuse the application. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 112(2) of the Bill that will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to have been paid in certain circumstances.

Subclause 112(3) will enable the Secretary to set an expiry date for the registration if it is appropriate. Two notes will be included at the end of subclause 112(3). Note 1 will advise the reader that if an expiry date is not set under subclause 112(3), the registration remains in force unless it is revoked in accordance with subclause 115(1) of the Bill. Note 2 will advise the reader that a decision to set an expiry date for the registration of an establishment will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 112(4) will enable the Secretary to set an expiry date for the registration of an establishment under subclause 112(3) even if rules made for the purposes of subclause 115(5) apply in relation to the registration. For example, rules made for the purposes of subclause 115(5) may provide an expiry date for establishments for a particular kind of export operations, as ten years from the date of registration. This would not prevent the Secretary from setting a different expiry date for that establishment under subclause 112(3), for example...
five years from the date of registration), if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for specific applications, even if rules are made setting an expiry date for applications for a particular kind of export operations.

**Clause 113  Conditions of registration**

Subclause 113(1) will provide that, if the Secretary registers an establishment in relation to a kind of export operations in relation to a kind of prescribed goods, the registration of the establishment will be subject to the following:

- conditions that will be provided by the Bill;
- conditions that will be prescribed by the rules (other than those conditions that the Secretary decides are not to be conditions of the particular registration). The conditions that are not to apply to a particular registration of an establishment must be set out in the notice of decision given to the applicant under clause 114 of the Bill; and
- any additional conditions that the Secretary considers are appropriate for the registration under consideration. These additional conditions must be set out in the notice of decision given to the applicant under clause 114 of the Bill.

Four notes will be included at the end of subclause 113(1). Note 1 will refer the reader to clause 144 of the Bill, which will provide that the occupier of a registered establishment may commit an offence or be liable to a civil penalty if a condition of the registration is contravened.

Note 2 will refer the reader to clauses 127 and 138 of the Bill, which will provide that the registration of the establishment may be suspended or revoked if a condition of the registration is contravened.

Note 3 will advise the reader that a decision to register the establishment subject to additional conditions will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to Part 7 of Chapter 4 of the Bill, which will set out additional obligations of the occupier of a registered establishment.

Subclause 113(2) will provide examples of the kind of conditions that the rules made for the purpose of subclause 113(1) may prescribe. These may be conditions that relate to:

- the occupier of an establishment;
- the kind of establishment;
- a kind of export operations;
- a kind of prescribed goods;
- importing country requirements relating to a kind of export operations or a kind of prescribed goods.

Enabling the rules made under clause 432 of the Bill to prescribe the conditions that must be met will provide the Secretary with the flexibility to determine the conditions that are necessary and appropriate for a certain type of establishment being considered for registration. This may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers are appropriate for the specific registered establishment under consideration will give the
Secretary the flexibility to determine additional conditions, relevant to a particular application, on a case-by-case basis. Imposing any additional conditions will also be necessary to ensure that the registration will be suitable for the export operations it will cover and that it will meet the requirements of the Bill.

The ability to impose conditions in the rules or by written notice is necessary to ensure that the export operations carried out at the registered establishment will meet the requirements of the Bill. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Subclause 113(3) will provide that, for the purposes of the Bill, conditions to which the registration will be subject under subclause 113(1) or clause 118 of the Bill (conditions of renewed registration) are conditions of the registration. Contravention of the conditions of a registration may be grounds for suspending the registration of an establishment under paragraph 127(1)(d) of the Bill or for revoking the registration of an establishment under paragraph 138(1)(d) of the Bill.

**Clause 114 Notice of decision and certificate of registration**

Clause 114 will provide that if the Secretary registers an establishment, then the Secretary must give the applicant a certificate of registration and a written notice that sets out the information specified in paragraphs 114(1)(a) and 114(1)(b) respectively.

Paragraph 114(1)(a) will provide that the certificate of registration must state:

- the registration number allocated to the establishment;
- the kind of export operations and kind of prescribed goods covered by the registration;
- each place the kind of prescribed goods covered by the registration may be exported (if applicable);
- the date the registration takes effect;
- that the registration will remain in force indefinitely or the expiry date for the registration; and
- any other information prescribed by the rules.

The intent of the certificate of registration is to provide the occupier with a document that shows that the establishment is registered for certain export operations.

Paragraph 114(1)(b) will provide that the written notice must state:

- any conditions prescribed by the rules that the Secretary has decided are not to be conditions of the registration;
- any additional conditions of the registration;
- any other information prescribed by the rules.

The primary intent of the written notice is to provide the occupier with information about the conditions that will apply to their registration. The notice will not set out all conditions or requirements that are applicable to the registration in the rules made under clause 432 of the Bill, but will identify any conditions in the rules that do not apply, as well any conditions of the registration that are particular to this application. Providing this information will enable the applicant to readily identify the conditions of the registration that must be complied with.

Enabling the rules made under clause 432 of the Bill to prescribe any other information that must be stated on a certificate of registration or written notice in paragraphs 114(1)(a) and
114(1)(b) respectively, will provide the Secretary with the flexibility to determine additional matters that are of importance to the registration of establishments. Such matters may be, for example, specific to a kind of prescribed goods, kind of export operations, or place of export. The ability to prescribe other information also reflects the likelihood that the requirements of a certificate of registration and written notice will change from time to time and will need to commence at short notice.

**Clause 115  Period of effect of registration**

Clause 115 will provide certainty to the holder of a registered establishment about the period of effect of the registration and the circumstances, such as a revocation or renewal, which may change this period.

*Registrations that have no expiry date*

If no expiry date is set for the registered establishment, subclause 115(1) will provide that the registration of the establishment will remain in force unless it is revoked under Part 6 of Chapter 4 of the Bill, or it is taken to be revoked under clause 147 of the Bill.

*Registrations that have an expiry date*

Subclause 115(2) will provide that if there is an expiry date for the registered establishment, the registration will remain in force until the end of that date unless the registration is renewed under Part 3 of Chapter 4 of the Bill, revoked under Part 6 of Chapter 4 of the Bill or is taken to have been revoked under clause 147 of the Bill, on or before that date.

Subclause 115(3) will provide that there is an expiry date for the registration of an establishment if rules made for the purposes of subclause 115(5) apply in relation to the registration (paragraph 115(3)(a)) or an expiry date for the registration set under subclauses 112(3) or 117(3) or paragraphs 123(1)(c) or (d) is in force in relation to the registration (paragraph 115(3)(b)).

Subclause 115(4) will provide that the **expiry date** for the registration of an establishment is either:

- the last day of the period prescribed by the rules, if rules made for the purposes of subclause 115(5) apply in relation to the registration and no expiry date set under subclause 112(3) or 117(3) or paragraph 123(1)(c) or (d) is in force (paragraph 115(4)(a)); or

- the expiry date set under subclause 112(3) or 117(3) or paragraph 123(1)(c) or (d) is in force in relation to the registered establishment (paragraph 115(4)(b)).

*Rules may prescribe period of effect of registration*

Subclause 115(5) will provide that the rules may prescribe the period during which the registration of an establishment remains in force. The rules may apply in relation to the registration of establishments in general (paragraph 115(5)(a)) or registration of establishments for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported (paragraph 115(5)(b)).
PART 3—RENEWAL OF REGISTRATION

Clause 116 Application to renew registration of establishment

Subclause 116(1) will provide that clause 116 will apply in relation to a registered establishment (including one that has been suspended) if there is an expiry date for the registration.

A note will be included at the end of subclause 116(1) that will advise the reader that they should see subclause 115(3) and 115(4) for when there is an expiry date for the registration of an establishment.

Subclause 116(2) will provide that, if there is an expiry date for a registered establishment, the occupier of the registered establishment may apply to the Secretary to renew the registration. A note will be included at the end of subclause 116(2) that will refer the reader to clause 377, which will set out the general requirements for applications under the Bill, including applications to renew the registration of an establishment.

Paragraph 116(3)(a) will provide that an application for renewal may cover more than one kind of export operations and more than one kind of prescribed goods. Paragraph 116(3)(b) will provide that the application may, but is not required to, specify one or more places to which the goods are to be exported. The application to renew the registration of the establishment does not necessarily have to relate to the same kind of export operations or prescribed goods, or specify the same places to which the goods are to be exported, for which the establishment was originally registered. The application for renewal can cover the same matters or different matters.

Subclause 116(4) will provide that an application for renewal must be made within the period prescribed by the rules or any longer period allowed by the Secretary. Enabling the Secretary to prescribe this period in the rules made under clause 432 of the Bill will ensure the Secretary has the flexibility to set an appropriate period for the consideration of the application.

Subclause 116(5) will provide that if an application for renewal is made after the period that applies under subclause 116(4), then it is taken to be a new application to register the establishment. Subclause 116(5) will also provide that the provisions in Part 2 of Chapter 4 of the Bill (which relate to new applications to register an establishment) will apply in relation to the application, and the other provisions in Part 3 of Chapter 4 of the Bill (which relate to applications for renewal of the registration) will not apply.

Clause 117 Secretary must decide whether to renew registration

Subclause 117(1) will provide that, if the Secretary receives an application to renew the registration of an establishment under clause 116 of the Bill, the Secretary must decide either to renew, or to refuse to renew, the registration.

Four notes will be included at the end of subclause 117(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications to renew a registration, including the Secretary’s powers in dealing with applications and the time within which a decision must be made.
Note 2 will clarify that if an application is made to renew the registration for more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places, the registration may be renewed in relation to one or more of the export operations, in relation to one or more of those kinds of goods, for export to one or more of those places. This is intended to make it clear that the Secretary will have the discretion to renew the registration of an establishment for any combination of export operations, prescribed goods or places of export.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period, the Secretary is taken to have refused the application at the end of that period. Subclause 379(3) of the Bill will provide that the consideration period will be prescribed by the rules. Prescribing this period in the rules will provide the Secretary with the flexibility to set an appropriate period for the consideration of the application.

Note 4 will advise the reader that a decision to refuse to renew the registration of an establishment will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 117(2) will provide that the Secretary may refuse to renew a registration if the Secretary is not satisfied, having regard to any matter the Secretary considers relevant, of one or more of the following:

- the occupier of the establishment is a fit and proper person (having regard to the matters referred to in clause 372 of the Bill);
- all relevant Commonwealth liabilities of the occupier of the establishment or relating to the establishment itself have been paid or are taken to have been paid, or, if they have not been paid or are not taken to have been paid, the non-payment is due to exceptional circumstances;
- the occupier of the establishment has complied with the requirements of the Bill in relation to the export operations and prescribed goods covered by the registration (whether at the establishment or not);
- the conditions of the registration have been, and are being, complied with;
- the construction of the establishment and its equipment and facilities are suitable for carrying out export operations that would be covered by the registration (having regard to the matters prescribed by the rules);
- if the rules require export operations of that kind to be carried in relation to goods of that kind in accordance with an approved arrangement—an approved arrangement covering that kind of export operations and that kind of goods is in force; or
- any other requirement prescribed by the rules is met.

Enabling the rules made under clause 432 of the Bill to prescribe any other requirement that must be met before an establishment will be renewed will provide the Secretary with the flexibility to ensure that it is appropriate in all circumstances to renew an establishment and that there are no reasons to refuse the renewal. Such grounds may also be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.
Unlike approving an initial application for registration of an establishment, which requires the Secretary to be satisfied that all requirements prescribed by the rules for the purposes of subclause 112(2) of the Bill have been met, subclause 117(2) will only require the Secretary to consider whether there is evidence of non-compliance and hence grounds for refusing the request to renew. This approach will ensure that registrations will only be renewed in circumstances where there is a history of compliance by the occupier, where the requirements and conditions of the registration have been complied with, and where there are no outstanding financial liabilities.

A note will be included at the end of subclause 117(2) that will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances.

If the Secretary renews the registration of the establishment, subclause 117(3) will enable the Secretary to set an expiry date for the registration if the Secretary considers that this is appropriate. Two notes will be included at the end of subclause 117(3). Note 1 will advise the reader that, if there is no expiry date set, the registration remains in force unless it is revoked in accordance with subclause 115(1) of the Bill. Note 2 will advise the reader that a decision to set an expiry date for the renewed registration will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 117(4) will enable the Secretary to set an expiry date for the renewed registration of an establishment under 117(3) even if rules made for the purposes of subclause 115(5) apply in relation to the registration. For example, rules made for the purposes of subclause 115(5) may provide an expiry date for registration of establishments for a particular kind of export operations, as ten years from the date of registration. This would not prevent the Secretary from setting a different expiry date for that establishment under subclause 112(3), for example five years from the date of registration, if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for specific renewal applications, even if rules are made setting an expiry date for applications for a particular kind of export operations.

**Clause 118 Conditions of renewed registration**

As with the initial approval of a registration (see clause 113 of the Bill), clause 118 will provide that, if the Secretary renews the registration of an establishment, the registration will be subject to:

- the conditions that will be provided by the Bill;
- the conditions that will be prescribed by the rules (other than those conditions that the Secretary decides are not to apply to a particular renewal). The conditions that are not to apply to a particular renewal must be set out in the notice of decision given to the applicant under clause 119 of the Bill; and
- any additional conditions that the Secretary considers are appropriate for the renewal application under consideration. These additional conditions must be set out in the notice of decision given to the applicant under clause 119 of the Bill.

Enabling the rules made under clause 432 of the Bill to prescribe the conditions that must be met will provide the Secretary with the flexibility to determine the conditions that are
necessary and appropriate for a certain type of establishment that is subject to an application for renewal. This may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers appropriate for the specific registered establishment under consideration for renewal will give the Secretary the flexibility to determine additional conditions on a case-by-case basis. Imposing any additional conditions may also be necessary to ensure that the renewed registration will continue to be suitable for the export operations it will cover and that it will continue to meet the requirements of the Bill.

The ability to impose additional conditions in the rules or by written notice is necessary to ensure that the export operations carried out at the renewed registered establishment will meet the requirements of the Bill. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Four notes will be included at the end of clause 118. Note 1 will refer the reader to clause 144 of the Bill, which will provide that the occupier of a registered establishment may commit an offence or be liable to a civil penalty if a condition of the registration is contravened. Note 2 will refer the reader to clauses 127 and 138 of the Bill which will provide that the registration of an establishment may be suspended or revoked if a condition of the registered establishment is contravened. Note 3 will advise the reader that a decision to suspend the registration of an establishment subject to additional conditions under clause 118 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to Part 7 of Chapter 4 of the Bill, which will set out additional obligations of the occupier of a registered establishment.

Clause 119 Notice of decision and certificate of registration

Clause 119 will provide that, if the registration of an establishment is renewed, then the Secretary must give the applicant a certificate of registration and a written notice that sets out the relevant information specified in clause 114 of the Bill. This will ensure that the occupier of the registered establishment is aware of all matters in relation to the renewed registration, including any conditions to which the registration is subject.

PART 4—VARIATION OF REGISTRATION

Division 1—Application by occupier

Clause 120 Application by occupier for variation of registration or approval of alteration of establishment

Clause 120 will allow an occupier to apply to the Secretary to vary the registration of an establishment. It will also allow an occupier to apply for approval of an alteration to the establishment, such as an alteration to the physical premises. This will enable the Secretary to respond to the changing needs and requirements of the occupier and allow a flexible approach to the regulation of registered establishments.

Subclause 120(1) will provide that the occupier of a registered establishment may apply to the Secretary to:

- vary the registration of an establishment in relation to kinds of export operations, kinds of prescribed goods and, if applicable, places to which goods may be exported;
• approve an alteration of the establishment (including an addition to the establishment);
• vary the conditions of the registration;
• vary the particulars relating to the registration to make a minor change to a matter (including to correct a minor or technical error); or
• to vary any other aspect of the registration.

An example will be included at the end of subclause 120(1) to assist the reader in relation to what kind of matters may fall within ‘any other aspect of the registration’. The example will note that a variation may be needed to change the name of a person who manages or controls, or who will manage or control, export operations covered by the registration.

A note will be included at the end of subclause 120(1) that will refer the reader to clause 377 of the Bill, which will set out the general requirements for applications under the Bill, including applications for variation of the registration of an establishment or for approval of an alteration of an establishment.

Subclause 120(2) will provide that, on receiving an application made under subclause 120(1), the Secretary must decide either to make the variation or approve the alteration, or to refuse to make the variation or approve the alteration.

Three notes will be included at the end of subclause 120(2). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications.

Note 2 will refer the reader to subclause 379(2) of the Bill, which will provide that, if the Secretary does not make a decision within the consideration period, the Secretary is taken to have refused the application at the end of that period. Subclause 379(3) of the Bill will provide that the consideration period will be prescribed by the rules. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.

Note 3 will advise the reader that a decision to refuse to make the variation or approve the alteration of the establishment will be a reviewable decision, and will refer to the reader to Part 2 of Chapter 11 of the Bill. Note 3 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 120(3) will provide that the Secretary may make the variation, or give the approval, if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that, if the variation were made or the alteration were approved, the requirements of paragraphs 112(2) of the Bill would continue to be met, and any other requirements prescribed by the rules would be met.

Paragraph 120(3)(a) will enable the Secretary, in considering the variation or alteration, to take into account the same scope of matters as an application for an establishment to be registered. The intention of paragraph 120(3)(a) is that the Secretary may take into account any of the matters in subclause 112(2) according to the specific circumstances of the application.

Not all variations or alterations will necessarily relate to all of the factors in subclause 112(2). For example, not all variations or alterations will require a reconsideration of whether the occupier is a fit and proper person under paragraph 112(2)(a). The Secretary must take into account those matters relevant to the specific application for variation or alteration and then
determine if he or she is satisfied that the requirements will continue to be met. Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before a registration may be varied or altered may be necessary and appropriate for the type of variation under consideration and will provide the Secretary with the flexibility to specify matters that may be relevant to, for example, a kind of prescribed goods, kind of export operations or place of export.

A note will be included at the end of subclause 120(3) that will refer the reader to clause 122 of the Bill, which will provide that the occupier of a registered establishment may commit an offence or be liable to a civil penalty if the establishment is altered (including by way of addition) and the alteration has not been approved, or the occupier has not been given notice of the approval, under clause 122 of the Bill.

**Clause 121**  
**Notice of variation or approval of alteration**

Subclause 121(1) will provide that, if the Secretary makes a variation or approves an alteration under paragraph 120(2)(a) of the Bill, then the Secretary must give the occupier of the establishment a written notice of the variation or approval.

Subclause 121(2) will provide that the notice must include the following information:

- details of the variation or approval;
- the varied conditions of the registration (if the variation is of the conditions of the registration);
- the date the variation or approval takes effect;
- any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the written notice will provide the Secretary with the flexibility to ensure that the occupier of the establishment will receive all relevant information in relation to the variation or alteration.

The purpose of a notice under this clause is to inform the occupier of the establishment of the Secretary’s decision to make a variation or give an approval, as well as the terms under which the variation or approval is given.

Subclause 121(3) will provide that if the certificate of registration for the establishment needs to be changed to take into account the variation or approval, the Secretary must give the occupier of the establishment a new certificate of registration that includes the variation or alteration that has been approved. This must be given within seven days after making the variation or giving the approval.

A note will be included at the end of subclause 121(3) that will clarify that the registration, as varied, remains in force as provided by clause 115 of the Bill.

**Clause 122**  
**Certain alterations of registered establishment must not be made unless approved etc.**

Clause 122 will provide that an occupier will commit an offence and be liable to a civil penalty if an alteration is made to a registered establishment in certain circumstances. Alterations may include, for example, changes to the physical premises that is registered and the addition of new buildings.
Subclause 122(1) will provide that the occupier of a registered establishment will contravene this subclause if:

- the registered establishment is altered (including by way of addition to the establishment); and
- either:
  - the alteration has not been approved; or
  - the alteration has been approved under subclause 120(2) of the Bill, but the Secretary has not given the occupier the required notice of approval under clause 121 of the Bill.

Two notes will be included at the end of subclause 122(1). Note 1 will provide that the physical elements of an offence against subclause 122(3) will be set out in subclause 122(1) of the Bill. The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence. Note 2 will refer the reader to paragraphs 127(1)(j) and 138(1)(j) of the Bill, which will provide that the Secretary may suspend or revoke the registration of the establishment, respectively, if the occupier contravenes subclause 122(1).

Subclause 122(2) will provide that subclause 122(1) will not apply to an alteration of a kind prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe the kinds of alterations that will not be subject to the penalties under this clause will provide the Secretary with the flexibility to determine the kinds of minor alterations that do not necessarily need to be approved. Such alterations may be specific to a kind of prescribed goods, kind of export operations, or place of export.

A note will be included at the end of subclause 122(2) that will clarify that a defendant bears an evidential burden in relation to the matter in this subclause. The note will also refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.

Subclause 122(3) will provide that a person will commit a fault-based offence if the person contravenes subclause 122(1) of the Bill. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 122(1) will be 600 penalty units.

Subclause 122(4) will provide that a person will be liable to a civil penalty if the person contravenes subclause 122(1). The civil penalty provision will be subject to a penalty of 240 penalty units if the person contravenes subclause 122(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 122(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 122(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 122(4) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.
The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of implementing an alteration to a registered establishment without approval. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Division 2—Variation by Secretary

Clause 123 Secretary may make variations in relation to registration

Clause 123 will enable the Secretary to vary the registration, the conditions of the registration, or the expiry date of a registration on the Secretary’s own initiative—that is, without having received an application to vary the registration from the occupier under clause 120 of the Bill. This will be an important safeguard if, for example, a matter is brought to the attention of the Secretary that will affect the registration and will need to be brought to the occupier’s attention.

Subclause 123(1) will provide that the Secretary may do any of the following in relation to the registration of an establishment:

- vary any aspect of the registration, including so that it does not cover a kind of export operations, kind of prescribed goods, or (if applicable) a place to which goods may be exported;
- vary the conditions of the registration (including by imposing new conditions);
- if there is no expiry date for the registration—set an expiry date;
- if there is an expiry date for the registration—vary the expiry date; or
- if there is an expiry date for the registration - vary the registration by revoking the expiry date.

Two notes will be included at the end of subclause 123(1). Note 1 will provide that if the Secretary revokes the expiry date for the registration under paragraph 123(e), the registration will remain in force for the period prescribed by the rules, if rules made for the purposes of subclause 115(5) apply or indefinitely (unless revoked) if no such rules exist. Note 2 will advise the reader that certain decisions made under subclause 123(1) will be reviewable decisions, and will refer the reader to Part 2 of Chapter 11 of the Bill. Clause 381 of the Bill will provide that only decisions made under paragraphs 123(1)(a) (varying an aspect of the registration), 123(1)(b) (varying or adding new conditions), 123(1)(c) (setting an expiry date) and paragraph 123(1)(d) (varying the expiry date) are reviewable. These decisions are reviewable as they may impact on the interests of the occupier of the registered establishment. A decision made under paragraph 123(1)(e) (varying the registration so that it remains in force indefinitely) will not be a reviewable decision as it will be benefit the occupier of the registered establishment.

Subclause 123(2) will provide that the Secretary may only make a variation or set an earlier expiry date under subclause 123(1) if the Secretary reasonably believes that:
the integrity of the goods covered by the registration cannot be ensured; or
it is necessary to ensure:
  o compliance with the requirements of the Bill in relation to the export operations and prescribed goods covered by the registration;
  o that importing country requirements relating to the export operations and prescribed goods covered by the registration are, or will be, met;
the occupier of the establishment is not a fit and proper person (having regard to matters in clause 372 of the Bill);
a condition of the registration has been, or is being, contravened;
a condition of, or the equipment or facilities in, the establishment has changed;
there has been a change to the suitability of the establishment for the export operations covered by the registration;
it is necessary to do so to take account of an event notified under clause 146 of the Bill or to correct a minor or technical error; or
the registration needs to be varied for any other reason prescribed by the rules.

Paragraph 123(2)(f) will enable the Secretary to vary the registration of an establishment if the Secretary reasonably believes that there has been a change in the suitability of the establishment for the export operations covered by the registration. The decision about whether there has been a change in the suitability of the establishment will take into account the matters that were considered when the establishment was initially assessed as being suitable for registration under paragraph 112(2)(c). Under that paragraph, the suitability of the establishment, its equipment or facilities, will be determined by the matters prescribed by the rules made under clause 432 of the Bill for the purposes of paragraph 112(2)(c) of the Bill.

The Secretary will be required to reasonably believe that one or more of grounds set out in subclause 123(2) exists before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standards for making a variation to the registration of an establishment under existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe other reasons why a registration may be varied will provide the Secretary with the flexibility to accommodate a range of circumstances under which the registration may need to be varied. This may be specific to a kind of prescribed goods, kind of export operations, or place of export.

Notice of certain proposed variations

Subclause 123(3) will provide that the Secretary must not make a variation listed in paragraphs 123(1)(a), (b) or (c) or set an earlier expiry date under paragraph 123(1)(d) unless the Secretary has given a written notice to the occupier of the establishment in accordance with subclause 123(4).

Subclause 123(4) will provide that the written notice under subclause 123(3) must:
  • specify each proposed variation and the grounds for each proposed variation;
  • subject to subclause 123(5), request the occupier of the establishment to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
• include a statement setting out the occupier’s right to seek review of a decision to make the proposed variation.

Subclause 123(5) will provide that, if the Secretary reasonably believes that the grounds for varying the registration are serious and urgent, then the Secretary is not required to include the request set out in paragraph 123(4)(c) in the notice issued under subclause 123(3). However, the notice of proposed variation must still be given. Subclause 123(5) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed variation, the Secretary must give a notice of variation in accordance with clause 124 of the Bill. A decision to make the variation will remain a reviewable decision.

**Clause 124 Notice of variation**

Subclause 124(1) will provide that, if the Secretary makes a variation in relation to the registration of an establishment under subclause 123(1) of the Bill, the Secretary must give the occupier of the establishment a written notice of the variation. The purpose of this notice is to inform the occupier of the establishment of the Secretary’s decision to make a variation, as well as the terms under which the variation is made.

Subclause 124(2) of the Bill will provide that the notice must state:

- details of the variation;
- if the variation is of the conditions of the registration—the varied conditions and any new conditions;
- if the variation affects the period of effect of the registration:
  - the expiry date for the registration under paragraph 115(4)(a) or (b) (whichever applies); or
  - if there is no expiry date, for the registration, that the registration remains in force unless it is revoked;
- the date the variation takes effect;
- any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the notice of variation will provide the Secretary with the flexibility to ensure that the occupier of the establishment will receive all relevant information in relation to the variation.

Subclause 124(3) will provide that, if a notice (a *show cause notice*) was given under subclause 123(3) of the Bill that included the request referred to in paragraph 123(4)(c) of the Bill, the variation must not take effect until the day after any response by the occupier is received or the end of the 14 day period after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to implement the variation during the 14 day period. If the occupier does not respond within the 14 day period, the variation will be able to be made. If the occupier responds within the 14 day period, the Secretary will be required to consider the occupier’s response when deciding whether to implement the variation.

In circumstances where the certificate of registration needs to be changed to take account of the variation, subclause 124(4) will provide that the Secretary must, within 7 days after
making the variation, give the occupier of the establishment a new certificate of registration which includes the variation.

A note will be included at the end of subclause 124(4) that will advise the reader that the registration, as varied, remains in force as provided for by clause 115 of the Bill.

PART 5—SUSPENSION OF REGISTRATION

Division 1—Suspension requested by occupier

Clause 125 Occupier may request suspension

Subclause 125(1) will provide that, subject to subclause 125(2), the occupier of a registered establishment may request the Secretary to suspend the registration in relation to a kind of export operations, a kind of prescribed goods and (if applicable) a place to which goods may be exported.

Subclause 125(2) will provide that a request under subclause 125(1) may only be made in the circumstances prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe when a request may be made provides the Secretary with the flexibility to determine the appropriate circumstances in which the occupier of a registered establishment may be able to request voluntary suspension. This may be specific to a kind of prescribed goods, kind of export operations or place of export.

Subclause 125(3) will provide that the request to suspend the registration under subclause 125(1) may relate to more than one kind of export operations, kind of prescribed goods or place to which goods may be exported. For example, an establishment could be registered to carry out export operations in relation to all fruit. If the market changes for the export of summer fruits, the occupier may request suspension in relation to export operations carried out in relation to summer fruits.

Subclause 125(4) will require the request under subclause 125(1) to be in writing and to:

- state each kind of export operations, prescribed goods and (if applicable) each place in relation to which the registration is to be suspended;
- specify the reason for the suspension; and
- include any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe other information will provide the Secretary with flexibility to determine additional information that is required in order for the Secretary to consider the request to suspend the registration.

The written request is intended to inform the Secretary of the basis for the request. This information will also be relevant to the Secretary’s consideration of a request to revoke a suspension under clause 126 of the Bill in that the Secretary will consider whether the reasons for requesting the suspension no longer exist, before agreeing to revoke a suspension.

Subclause 125(5) will provide that if the Secretary receives a request from the occupier in accordance with subclause 125(1), the Secretary must, by written notice to the occupier, suspend the registration as requested, with effect on the day specified in the notice.
Clause 126  Request to revoke suspension

Subclause 126(1) will provide that, if a registration is suspended under clause 125 of the Bill, the occupier of the establishment may request, in the manner set out in subclause 126(2), that the suspension be revoked.

Clause 126(2) will provide that the request must be in writing, state the reason for the request and include any other information prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe other information will provide the Secretary with the flexibility to determine the additional information that is required in order to make an informed decision about whether to revoke a suspension. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

Paragraph 126(3)(a) will provide that, if the Secretary receives a request under subclause 126(1), the Secretary may revoke the suspension by written notice if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked.

Paragraph 126(3)(b) will provide that, if the Secretary does not revoke the suspension under paragraph 126(3)(a), the Secretary may suspend the registration of the establishment under Division 2 of Part 5 of Chapter 4 of the Bill, or revoke the registration under Division 2 of Part 6 of Chapter 4 of the Bill.

For example, if the registration of an establishment that is registered to produce meat for export to the European Union is suspended, there may be reasons not to revoke the suspension until the Secretary is satisfied that the establishment is suitable to be registered again.

A decision to refuse to revoke a suspension will not be a reviewable decision. This is because if the occupier of the establishment requests the revocation of the suspension, the Secretary will only have three choices: to agree to revoke the suspension (in which case there is no requirement to seek review of the decision); to suspend the registration; or to revoke the registration. A note will be included at the end of subclause 126(3) that will advise the reader that a decision to suspend or revoke the registration of the establishment will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Division 2—Suspension by Secretary

Clause 127  Grounds for suspension—general

Clause 127 will set out a number of grounds upon which the Secretary may suspend some or all of the matters covered by a registration. This will mean that a registration may not be suspended in its entirety if the Secretary is satisfied that some aspects of the registration can continue irrespective of the suspension of other aspects. Written notice of the proposed suspension must be given prior to suspension. The ability to suspend a registration of an establishment may be necessary in a range of circumstances.

Subclause 127(1) will provide that the Secretary may suspend the registration of an establishment in relation to one or more kinds of export operations, and one or more kinds of prescribed goods, and (if applicable) one or more places of export, if the Secretary reasonably believes any of the following:
• the integrity of a kind of prescribed goods covered by the registration cannot be ensured;
• the occupier of the establishment is not a fit and proper person (having regard to the matters referred to in clause 372 of the Bill);
• a requirement referred to in subclause 112(2) of the Bill is no longer met;
• a condition of the registration has been, or is being, contravened;
• the condition of, or the equipment or facilities in, the establishment has changed;
• there has been a change to the suitability of the establishment for the export operations covered by the registration;
• the occupier of the establishment has failed to:
  o comply with a direction given to the occupier by an authorised officer or the Secretary;
  o comply with a request by an authorised officer to provide information or a document;
  o failed to provide facilities and assistance to an auditor as required by clause 271 of the Bill; or
  o failed to comply with a request made by an auditor under clause 272 of the Bill;
• the occupier of the establishment has engaged in conduct that either intimidated a person or hindered or prevented a person performing functions or exercising powers under the Bill, or prevents a person from performing functions or exercising powers under the Bill;
• the occupier of the establishment or any other person who manages or controls export operations at the establishment:
  o made a false, misleading or incomplete statement in an application under Chapter 4 of the Bill; or
  o gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
  o gave false, misleading or incomplete information or documents to the Secretary, or the Department, under a prescribed agriculture law;
• the occupier of the establishment has contravened a requirement of the Bill in relation to the registration of the establishment;
• a ground prescribed by the rules exists.

Enabling the rules made under clause 432 of the Bill to prescribe other grounds provides the Secretary with the flexibility to determine additional grounds on which it is appropriate or necessary to suspend a registration. Such grounds may be, for example, specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that grounds may need to change from time to time and will need to commence at short notice.

Paragraph 127(1)(f) will enable the Secretary to suspend the registration of an establishment if the Secretary reasonably believes that there has been a change in the suitability of the establishment for the export operations covered by the registration. The decision about whether there has been a change in the suitability of the establishment will take into account the matters that were considered when the establishment was initially assessed as being suitable for registration under paragraph 112(2)(c). Under that paragraph, the suitability of the establishment, its equipment or facilities, will be determined by the matters prescribed by the rules made under clause 432 of the Bill for the purposes of paragraph 112(2)(c) of the Bill.
Subparagraph 127(1)(g)(i) will provide that the Secretary may suspend the registration of an establishment if the occupier fails to comply with a direction given by an authorised officer or the Secretary. Contravening a direction from an authorised officer or the Secretary is a serious act. It may compromise export operations that are taking place at the registered establishment (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response. This subparagraph will be important to ensuring that the effectiveness of the regulatory framework is maintained by providing the Secretary with the ability to suspend export operations on the basis of a contravention of a direction by an authorised officer or the Secretary.

Subparagraph 127(1)(h)(i) will provide that the Secretary may suspend the registration of an establishment if the Secretary reasonably believes that the occupier intimidated a person performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person. Engaging in such conduct is a serious act. Such conduct may also amount to an offence under 149.1 of the Criminal Code (obstruction of Commonwealth public officials). Such conduct may also compromise export operations that are taking place at the registered establishment (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.

The Secretary will be required to reasonably believe that the one or more grounds set out in subclause 127(1) exists, before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standards for suspending the registration of an establishment under existing legislation.

Two notes will be included at the end of subclause 127(1). Note 1 will refer the reader to clause 130 of the Bill, which will provide that a suspension of a registered establishment must not be greater than 12 months. Note 2 will advise the reader that a decision to suspend the registration of an establishment under clause 127 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Notice of proposed suspension

Subclause 127(2) will provide that the Secretary must not suspend a registration under subclause 127(1) unless the Secretary has given a written notice to the occupier of the establishment in accordance with subclause 127(3).

Subclause 127(3) will provide that the written notice must:

- specify each kind of export operations and each kind of prescribed goods and (if applicable) each place in relation to which the registration is proposed to be suspended, and the grounds for the proposed suspension; and
- subject to subclause 127(4), request the occupier of the registered establishment to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the registration should not be suspended; and
- include a statement setting out the occupier’s right to seek review of a decision to suspend the registration as proposed.
Subclause 127(4) will provide that, if the Secretary reasonably believes that the grounds for the suspension are serious and urgent, then the Secretary is not required to include the request in paragraph 127(3)(c) in the notice issued under subclause 127(2). However, the notice of proposed suspension must still be given. Subclause 127(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed suspension, the Secretary must give a notice of suspension in accordance with clause 129 of the Bill. A decision to suspend the registration will remain a reviewable decision.

Clause 128 Grounds for suspension—overdue relevant Commonwealth liability

Clause 128 will provide that an overdue relevant Commonwealth liability will be a ground for suspending a registration. This clause is intended to ensure timely payment of liabilities that are due and to prevent further debts to the Commonwealth from being incurred.

Notice of proposed suspension

Subclause 128(1) will provide that the Secretary may suspend the registration of an establishment in relation to all kinds of export operations and all kinds of prescribed goods if:

- a relevant Commonwealth liability of the occupier of a registered establishment, or relating to the establishment, is more than 30 days overdue; and
- the Secretary has given a written notice (in accordance with subclause 128(2)) to the person (the debtor) who is liable to pay the relevant Commonwealth liability; and
- within eight days after the notice is given:
  - the relevant Commonwealth liability has not been paid; or
  - the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Subclause 128(1) will refer to the debtor, and not the occupier of the establishment, as the debt may be the responsibility of someone else but nevertheless relate to the establishment (see paragraph 128(1)(b)).

Unlike suspension under clause 127 of the Bill, the suspension of the registration under clause 128 will be a full suspension of the registration of the establishment and cannot be in relation to only some of the matters covered by the registration. This will be necessary as the overdue Commonwealth liability impacts the whole registration and not just parts thereof.

Three notes will be included at the end of subclause 128(1). Note 1 will refer the reader to clause 130 of the Bill, which will provide that a suspension of a registration must not be for more than 12 months. Note 2 will advise the reader that a decision to suspend the registration of an establishment under clause 128 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will refer the reader to clause 139 of the Bill and clarify that if the Secretary suspends the registration of the establishment under clause 128, the Secretary may revoke the registration of the establishment in certain circumstances, including in relation to an overdue Commonwealth liability.

Subclause 128(2) will provide that the written notice under subclause 128(1) must:

- state that a relevant Commonwealth liability of the debtor in relation to a registered establishment is more than 30 days overdue; and
• state that the Secretary may suspend the registration of the establishment in relation to all kinds of export operations and all kinds of prescribed goods if, within eight days after the notice is given, the relevant Commonwealth liability is not paid or the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability; and
• include a statement setting out the debtor’s right to seek review of a decision to suspend the registration of the establishment.

Secretary may direct that activities not be carried out

Subclause 128(3) will provide that, if the Secretary suspends the registration under subclause 128(1), the Secretary may also refuse to carry out, or direct a person (for example, an authorised officer) not to carry out, specified activities or kinds of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid. This will have the effect of encouraging the debtor to pay the relevant Commonwealth liability so that they will be able to continue exporting goods.

A note will be included at the end of subclause 128(3) that will direct the reader to clause 309 of the Bill, which deals with general provisions that relate to directions.

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

Subclause 128(4) will provide that any action taken by the Secretary under clause 128 does not remove the liability of the debtor to pay the relevant Commonwealth liability. This will mean that, for example, if the Secretary suspends the registration under clause 128(1) because an occupier has an overdue relevant Commonwealth liability, the occupier will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

Clause 129 Notice of suspension

Clause 129 will provide that, if the Secretary decides to suspend the registration under Division 2 of Part 5 of Chapter 4 of the Bill (see clauses 127 or 128 of the Bill) the Secretary must give the occupier of the establishment a written notice of the suspension.

Subclause 129(1) will provide that the written notice must include:

• a statement that the registration is to be suspended for the period specified in the notice in relation to all or specified kind of export operations, prescribed goods and, if applicable, places to which goods may be exported;
• the reasons for the suspension;
• the date the suspension is to start;
• the period of the suspension.

A note will be included at the end of subclause 129(1) clarifying that the notice must also state the matters referred to in clause 382 of the Bill.

Subclause 129(2) will provide that, if a notice (a show cause notice) was given under paragraph 127(2) that included the request referred to in paragraph 127(3)(c) of the Bill, the suspension must not start until the date after any response by the occupier is received by the Secretary or 14 days after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to suspend the registration
during the 14 day period. If the occupier does not respond within the 14 day period, the suspension will be able to be implemented. If the occupier responds within the 14 day period, the Secretary will be required to consider the occupier’s response when deciding whether to implement the suspension.

Clause 130       Period of suspension

Subclause 130(1) will provide that the suspension of the registration under Division 2 of Part 5 of Chapter 4 of the Bill (see clauses 127 and 128 of the Bill) must not be for more than 12 months. This will provide certainty to the holder of the registration about the period of the suspension and prevent a registration from being suspended indefinitely. It is intended that the matters that necessitated the suspension must be resolved in 12 months or less, otherwise the Secretary will have the option of revoking the registration.

Subclause 130(2) will provide that the Secretary may vary the period of a suspension by written notice to the occupier of the registered establishment but the total period of suspension must not be for more than 12 months. A note will be included at the end of subclause 130(2) that will advise the reader that a decision to extend the period of suspension will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

If the reason for the suspension warrants a longer period of suspension, then the Secretary may revoke the registration under Division 2 of Part 6 of Chapter 4 of the Bill instead, provided that the relevant grounds for revocation exist (see Division 2 of Part 6 of Chapter 4 of the Bill).

Clause 131       Revocation of suspension

The suspension of a registration need not remain in place for the entire period set out under paragraph 129(1)(d) of the Bill. Clause 131 will provide that the Secretary may revoke a suspension made under Division 2 of Part 5 of Chapter 4 of the Bill by written notice to the occupier of the registered establishment. Revocation of a suspension may occur, for example, in circumstances where the Secretary is satisfied that the grounds for the suspension no longer exist or have been rectified.

Division 3—Direction to cease carrying out export operations

Clause 132       Direction to cease carrying out export operations—failure to comply with conditions or requirements of this Act etc

Subclause 132(1) will enable the Secretary to give the occupier of a registered establishment a written direction to cease carrying out one or more kinds of export operations in relation to particular prescribed goods, or a kind of prescribed goods, covered by the registration, if the Secretary reasonably suspects that:

- a condition of the registration of the establishment has been contravened, or it is likely that such a condition will be contravened; or
- the occupier has not complied, or is likely not to comply, with a requirement of the Bill; or
- the integrity of the particular goods, or the kind of prescribed goods, covered by the registration cannot be ensured, or it is likely that the integrity of the particular prescribed goods, or a kind of prescribed goods, covered by the registration will not be able to be ensured; or
• the particular prescribed goods, or the kind of prescribed goods, covered by the registration:
  o do not comply, or are not likely to comply, with a requirement of the Bill that relates to those goods; or
  o do not meet, or are not likely to meet, an importing country requirement relating to those goods.

The Secretary will be required to reasonably suspect that one or more grounds set out in subclause 132(1) exists, before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than a reason to consider or look into the possibility of its existence. This threshold is lower than reasonable belief and is appropriate where the Secretary has to issue a direction to the occupier of a registered establishment to cease export operations in serious circumstances. The circumstances in which the Secretary can direct the occupier of a registered establishment to cease export operations are limited and reflect conduct that could compromise the integrity of the Australian export control regime. Given the urgent requirement to give such a direction, it is not subject to merits review, as this could compromise market access and importing countries’ reliance on a robust regulatory framework.

Two notes will be included at the end of subclause 132. Note 1 will provide that an authorised officer may also give a direction to the occupier of the registered establishment, and will refer the reader to clause 305 of the Bill. Note 2 will refer the reader to clause 309 of the Bill, which contains general provisions relating to directions.

Subclause 132(2) will provide that a direction under subclause 132(1) must state:
• the reasons for giving the direction; and
• the date that the occupier is to cease carrying out the relevant export operations in relation to the particular prescribed goods or kind of prescribed goods (as the case may be); and
• that the person may commit an offence or be liable to a civil penalty if the person fails to comply with the direction.

Registration taken to have been suspended

Subclause 132(3) will provide that if a direction is given to the occupier of a registered establishment under subclause 132(1) to cease export operations in relation to one or more kinds of export operations in relation to one or more kinds of prescribed goods covered by the registration, the registration of the establishment is taken to have been suspended in relation to those kinds of export operations and those kinds of goods until the direction is revoked.

Clause 133 Occupier must comply with direction

Subclause 133(1) will provide that, if the occupier of a registered establishment is given a direction under subclause 133(1) to cease carrying out one or more kinds of export operations, the occupier must comply with the direction.

Subclause 133(2) will provide that a person will commit a fault-based offence if the person is given a direction under subclause 133(1) of the Bill, and the occupier engages in conduct that contravenes the direction. The fault-based offence will be subject to a penalty of
imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 133(1) will be 600 penalty units.

Subclause 133(3) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 133(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 133(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 133(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 133(3) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of contravening a direction from an authorised officer or the Secretary. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 134 Revocation of direction

A direction to an occupier need not remain in place for the entire period set out under clause 132 of the Bill. Subclauses 134(1) and 134(2) will provide that the Secretary may revoke a direction made under Division 3 of Part 5 of Chapter 4 of the Bill by written notice to the occupier of the registered establishment. Revocation of a direction may occur in circumstances where, for example, the Secretary is satisfied that the grounds for the direction no longer exist or have been rectified.

Division 4—Other provisions

Clause 135 Effect of suspension

Clause 135 will provide that the effect of a suspension of a registration is that the registration will remain in force and the requirements of the Bill in relation to that registration will continue to apply (unless the rules made under clause 432 of the Bill say otherwise). This will allow, for example, activities such as an audit to be undertaken while the suspension is in place, for the purpose of determining compliance with requirements of the Bill.

Subclause 135(1) will provide that if the registration of an establishment is suspended wholly or in part under Division 1 or 2 of Part 5 of Chapter 4, or is taken to have been suspended under subclause 132(3) of the Bill, the registration of the establishment remains in force while it is suspended, and the requirements of the Bill in relation to the registration (including the conditions of the registration) must be complied with while the registration is suspended.
Subclause 135(2) will provide that the rules may prescribe requirements of the Bill (including conditions of the registration) that will not apply during the period of suspension. The effect of this is that the default position is that all requirements of the Bill, such as the requirement to be audited or to comply with a direction of an authorised officer and conditions of the registration, will continue to apply unless the rules provide otherwise.

Enabling the rules made under clause 432 of the Bill to prescribe the requirements of the Bill, including conditions of the registration, that will not apply during the period of suspension will provide the Secretary with the flexibility to reduce the regulatory burden on the occupier of a registered establishment. This will also allow the requirements that do not apply during a period of suspension to be specific to a kind of prescribed goods, kind of export operations, or place of export.

Clause 136 Export operations must not be carried out while registration suspended

Clause 136 will provide that penalties may be imposed in circumstances where export operations are carried out while a registration was suspended.

Subclause 136(1) will provide that the occupier of a registered establishment contravenes subclause 136(1) if:

- the occupier was given a notice of suspension under subclauses 125(5) or 129(1) of the Bill; and
- export operations in relation to which the registration was suspended were carried out at the establishment while the registration was suspended.

A note will be included at the end of subclause 136(1) that will advise the reader that the physical elements of an offence against subclause 136(2) will be set out in subclause 136(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 136(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 136(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 136(1) will be 600 penalty units.

Subclause 136(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 136(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 136(1). The maximum fine for a body corporate for a contravention of subclause 136(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 136(3) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of conducting export operations while the registration of an establishment is
suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 6—REVOCATION OF REGISTRATION

Division 1—Revocation requested by occupier

Clause 137  Occupier may request revocation

Subclause 137(1) will provide that the occupier of a registered establishment may request the Secretary to revoke the registration of the establishment. This includes the registration of an establishment that is suspended under Part 5 of Chapter 4 of the Bill.

A note will be included at the end of subclause 137(1) that will clarify that if the occupier does not wish to revoke the registration in relation to all kinds of export operations and prescribed goods, the occupier may apply to vary the registration under Division 1 of Part 4 of the Bill. This will allow the occupier of the establishment to apply to vary aspects of the registration including the kinds of export operations, the kinds of prescribed goods and the places to which goods are to be exported.

Subclause 137(2) will require the request under subclause 137(1) to be in writing, and include the information (if any) prescribed by the rules made under clause 432 of the Bill. Enabling the rules to set out any other information that must be included in a request for revocation will provide the Secretary with the flexibility to ensure that all relevant information is included in the application so that the Secretary will be able to make an informed decision about the voluntary request for a revocation.

Subclause 137(3) will provide that if the Secretary receives a request under subclause 137(1), the Secretary must, by written notice to the occupier, revoke the registration with effect on the day specified in the notice.

Subclause 137(4) will provide that the Secretary does not have to revoke the registration if, before the occupier made the request under clause 137(1), the Secretary had given the occupier a notice under clause 138(2) of the Bill proposing to revoke the registration and the Secretary had not decided whether to revoke the registration.

In these circumstances, the Secretary will not be required to agree to a request to revoke the registration under subclause 137(1). This is intended to ensure that the Secretary considers the matters set out in subclause 138(1) of the Bill before accepting the request to revoke the registration. Consideration of these matters may, for example, establish whether the occupier has committed an offence or is liable for a civil penalty for contravening a condition of the registration or determine the required action after the registration has been revoked (see clause 142 of the Bill).
Division 2—Revocation by Secretary

Clause 138  Grounds for revocation—general

The ability to revoke a registration may be necessary in a range of circumstances, including where the Secretary reasonably believes that the integrity of the prescribed goods cannot be ensured or that prescribed requirements will not be met, where conditions of the registration have been contravened, or in relation to certain conduct by the occupier of the establishment, such as a failure to comply with a direction.

The revocation of a registration is of the whole registration and cannot be in relation to only some of the matters covered by the registration. This reflects the likely seriousness of the circumstances necessitating a revocation by the Secretary, which cannot be dealt with by other means such as a varying or suspending the registration.

There are a number of grounds upon which the Secretary may revoke a registration (including a registration that is suspended under Part 5 of Chapter 4 of the Bill). These grounds will be set out in subclause 138(1). These are the same grounds as the grounds for suspension in subclause 127(1) of the Bill.

Subclause 138(1) will provide that the Secretary may revoke a registration if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by the registration cannot be ensured;
- if the occupier of the establishment is not a fit and proper person having regard to the matters referred to in clause 372 of the Bill;
- a requirement referred to in subclause 112(2) of the Bill is no longer met;
- a condition of the registration has been, or is being, contravened;
- the condition of, or the equipment or facilities in, the establishment has changed;
- there has been a change to the suitability of the establishment for the export operations covered by the registration;
- the occupier of the establishment has failed to:
  - comply with a direction given to the occupier by an authorised officer or the Secretary; or
  - comply with a request by an authorised officer to provide information or a document;
  - provide facilities and assistance to an auditor as required by clause 271 of the Bill; or
  - comply with a request made by an auditor under clause 272 of the Bill;
- the occupier of the establishment has engaged in conduct that either intimidates or hinders or prevents a person from performing functions or exercising powers under the Bill, or prevents a person from performing functions or exercising powers under the Bill;
- the occupier of the establishment or any other person who manages or controls export operations at the establishment:
  - made a false, misleading or incomplete statement in an application under Chapter 4 of the Bill;
  - gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
o gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;

- the occupier of the establishment has contravened a requirement of the Bill in relation to the registration of the establishment;
- a ground prescribed by the rules exists.

The Secretary will be required to reasonably believe that the one or more grounds set out in subclause 138(1) exists, before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standards for revoking the registration of an establishment under existing legislation.

Paragraph 138(1)(h) will provide that the Secretary may revoke the registration if the Secretary reasonably believes that the occupier intimidated a person or hindered or prevented them from performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person.

Engaging in such conduct is a serious act. It may compromise export operations carried out in relation to a registration (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.

Enabling the rules made under clause 432 of the Bill to prescribe any additional grounds on which the registration may be revoked will provide the Secretary with the flexibility to address the wide range of matters that relate to a registration and that might impact on the suitability of the registration, thereby necessitating the revocation of the registration. It will also enable the basis for a revocation to be specific to a kind of prescribed goods, kind of export operations, or place of export. It also reflects the likelihood that grounds may need to change from time to time and the changes will need to commence at short notice.

A note will be included at the end subclause 138(1) that will advise the reader that a decision to revoke the registration of an establishment will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

*Notice of proposed revocation*

Subclause 138(2) will provide that the Secretary must not revoke the registration under subclause 138(1) unless the Secretary has given a written notice to the occupier of the establishment in accordance with subclause 138(3).
Subclause 138(3) will provide that the written notice must:

- specify the grounds for the proposed revocation; and
- subject to subclause 138(4), request the occupier of the registered establishment to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the registration should not be revoked; and
- include a statement setting out the occupier’s right to seek review of a decision to revoke the registration.

Subclause 138(4) will provide that, if the Secretary reasonably believes that the grounds for the revocation are serious and urgent, then the Secretary is not required to include the request in paragraph 138(3)(b) in the notice given under subclause 138(2). Subclause 138(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. However, the notice of proposed revocation must still be given. In addition to the notice of proposed revocation, the Secretary must give a notice of variation in accordance with clause 140 of the Bill. A decision to revoke the registration will remain a reviewable decision.

**Clause 139  Grounds for revocation—overdue relevant Commonwealth liability**

Clause 139 will provide that an overdue relevant Commonwealth liability will be grounds for revoking a registration. This clause is intended to ensure timely payment of liabilities that are due and to prevent further debts to the Commonwealth from being incurred.

Subclause 139(1) will provide that the Secretary may revoke a registration if:

- the registration is suspended under subclause 128(1) for non-payment of a relevant Commonwealth liability; and
- within 90 days after the start of the suspension, the relevant Commonwealth liability has not been paid, or the person (the debtor) who is liable to pay the debt has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Subparagraph 139(1)(b)(ii) will refer to the debtor, and not the occupier of the establishment, as the debt may be the responsibility of someone else but nevertheless relate to the establishment.

As with a revocation under clause 138 of the Bill, a revocation under clause 139 is a full revocation of the registration and cannot be in relation to only some of the matters covered by the registration.

A note will be included at the end of subclause 139(1) that will advise the reader that a decision to revoke the registration of an establishment will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

**Secretary may direct that activities not be carried out**

Subclause 139(2) will provide that, if the Secretary revokes the registration under subclause 139(1), the Secretary may also refuse to carry out, or direct a person (for example, an authorised officer) not to carry out, specified activities or kinds of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid.
A note will be included at the end of subclause 139(2) that will refer the reader to clause 309 of the Bill, which deals with general provisions that relate to directions.

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

Subclause 139(3) will provide that any action taken by the Secretary under clause 139 does not affect the liability of the debtor to pay the relevant Commonwealth liability. This will mean that if, for example, the Secretary revokes the registration under clause 139(1) because an occupier has an overdue relevant Commonwealth liability, the occupier will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

**Clause 140 Notice of revocation**

Subclause 140(1) will provide that, if the Secretary revokes a registration under Division 2 of Part 6 of Chapter 4 of the Bill (see clauses 138 and 139 of the Bill), the Secretary must give the occupier a written notice of the revocation. Subclause 140(1) will provide that the notice must state that the registration of the establishment is revoked, the reasons for the revocation, and the date the revocation is to take effect.

A note will be included at the end of subclause 140(1) that will provide that the notice must also state the matters referred to in clause 382 of the Bill.

Subclause 140(2) will provide that, if a notice (a *show cause notice*) was given under subclause 138(2) of the Bill, that included the request referred to in paragraph 138(3)(b) of the Bill, the revocation must not take effect until the date after any response by the occupier is received or 14 days after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to revoke the registration during the 14 day period. If the occupier does not respond within the 14 day period, the revocation will be able to be implemented. If the occupier responds within the 14 day period, the Secretary will be required to consider the occupier’s response when deciding whether to implement the revocation.

**Division 3—Other provisions**

**Clause 141 Export operations must not be carried out after registration of establishment revoked**

Clause 141 will provide that penalties may be imposed in circumstances where export operations are carried out after a registration is revoked.

Subclause 141(1) will provide that the occupier of a registered establishment will contravene this subclause if the occupier was given a notice of revocation under subclauses 137(3) or 140(1) of the Bill, and export operations that were covered by the registration of the establishment were carried out at the establishment after the revocation took effect.

A note will be included at the end of subclause 141(1) that will refer the reader to subclause 141(2), which will provide that the physical elements of an offence against subclause 141(2) will be set out in subclause 141(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 141(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 141(1) of the Bill. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 141(1) will be 600 penalty units.

Subclause 141(3) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 141(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 141(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 141(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 141(3) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of conducting export operations after the registration of an establishment has been revoked. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 142 Secretary may require action to be taken after registration revoked

Clause 142(1) will provide that penalties may be imposed in circumstances where a person contravenes a direction that required the person to take specified action after an export licence was revoked.

Subclause 142(1) will provide that clause 142 will apply if a person was given a notice of revocation under subclauses 137(3) or 140(1) of the Bill (for example, if a notice has been given but the registration has not, as yet, been revoked) or the registration has been revoked under Division 1 or 2 of Part 6 of Chapter 4 of the Bill.

Subclause 142(2) will provide that the Secretary may, in writing, direct the occupier of the establishment to take specified action, within a specified period, in relation to export operations and goods that were covered by the registration. The action must be an action that is necessary for the purpose of achieving one or more objects of the Bill.

Subclause 142(3) will provide that a direction under subclause 142(2) must state that the person could commit an offence or be liable to a civil penalty if the person fails to comply with the direction. A note will be inserted at the end of subclause 142(3) that will refer the reader to clause 309 of the Bill, which is the general provision relating to directions.
Subclause 142(4) will provide that a person who is given a direction under subclause 142(2) must comply with that direction.

Subclause 142(5) will provide that a person will commit a fault-based offence if the person is given a direction under 142(2) and the person engages in conduct that contravenes the direction. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subclause 142(6) will provide that a person will be liable to a civil penalty if the person contravenes subclause 142(4). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 142(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 142(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 142(6) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of failing to comply with a direction of the Secretary in relation to export operations and goods that were covered by a registration that has been revoked. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**PART 7—OBLIGATIONS OF OCCUPIERS OF REGISTERED ESTABLISHMENTS**

**Clause 143**  
**Export operations not covered by registration must not be carried out**

Clause 143 will provide that penalties will be able to be imposed on the occupier of a registered establishment in circumstances where export operations are carried out at the establishment and the registration of the establishment does not cover those export operations in relation to that kind of goods.

For example, if the establishment is registered to process, pack and store goods for export, the occupier will commit an offence or be liable to a civil penalty if the establishment applies treatment to goods for export.

Subclause 143(1) will provide that the occupier of a registered establishment will contravene this subclause if:

- a kind of export operations is carried out in relation to a kind of prescribed goods at the establishment; and
the registration of the establishment does not cover that kind of export operations in relation to that kind of goods.

Subclause 143(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 143(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subclause 143(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 143(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 143(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 143(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 143(3) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of carrying out export operations at a registered establishment that is not registered for those export operations. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 144  Conditions of registration must not be contravened

Clause 144 will provide that penalties will be able to be imposed on the occupier of a registered establishment in circumstances where a condition of the registration is contravened, both when the registration is not suspended (see subclauses 144(1), (2) and (4)) and when the registration is suspended (see subclauses 144(4), (5) and (6)).

Registration that is not suspended

Subclause 144(1) will provide that a person will contravene subclause 144(1) if:

- the person is the occupier of a registered establishment;
- the registration is not suspended (wholly or in part) under Part 5;
- a condition of the registration is contravened; and
- the condition is required to be complied with during the period of suspension.

A note will be included at the end of subclause 144(1) that will provide that the physical elements of an offence against subclause 144(2) will be set out in subclause 144(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 144(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 144(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 144(1) will be 600 penalty units.

Subclause 144(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 144(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 144(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 144(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

Registration that is suspended

Subclause 144(4) will provide that a person will contravene subclause 144(4) if:

- the person is the occupier of a registered establishment;
- the registration is suspended (wholly or in part) under Part 5; and
- a condition of the registration is contravened.

A note will be included at the end of subclause 144(4) that will provide that the physical elements of an offence against subclause 144(5) will be set out in subclause 144(4). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 144(5) will provide that a person will commit a fault-based offence if the person contravenes subclause 144(4). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subclause 144(6) will provide that a person will be liable to a civil penalty if the person contravenes subclause 144(4). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 144(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 144(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalties prescribed in subclauses 144(3) and 144(6) will be twice as high as the penalties available for the criminal offences in subclauses 144(2) and 144(5). The penalties are intended to act as a deterrent, particularly for corporations, and recognise that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offences and the civil penalty provisions in these clauses reflect the seriousness of failing to comply with the conditions of the registration, irrespective of whether the registration is, or is not, suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 145 Additional or corrected information in relation to application for registration etc.**

Clause 145 will set out the circumstances in which an occupier must provide the Secretary with additional or corrected information in relation to an application for registration.

Subclause 145(1) will require the occupier of an establishment to give the Secretary additional or corrected information in accordance with subclause 145(2) if:

- the occupier becomes aware that information included in an application made by the occupier under Chapter 4 of the Bill, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
- a change prescribed by the rules made under clause 432 of the Bill occurs.

However, subclause 145(2) will only create an obligation on the occupier of the establishment to give the Secretary the additional or corrected information required under subclause 145(1) to the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to a matter covered by the registration of the establishment have been, are being, or will be complied with; or
- the importing country requirements in relation to a matter covered by the registration of the establishment have been, are being, or will be met.

Subclause 145(2) will also require the occupier to give the Secretary the additional or corrected information as soon as practicable. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis. Additional or corrected information that will not be relevant to that assessment will not need to be provided to the Secretary.

It is necessary for the Secretary to have the most up-to-date information to determine whether anything needs to be done in relation to the registered establishment. It may be that an establishment was registered in circumstances where, had the Secretary had the correct information, the establishment may not have been registered.

Enabling the rules made under clause 432 of the Bill to prescribe circumstances that will necessitate the occupier of a registered establishment to provide additional or corrected information will provide the Secretary with the flexibility to accommodate the range of changes in relation to the registration. This will enable a proactive response by the Secretary to changes that will necessitate the occupier of a registered establishment giving additional or corrected information to the Secretary. The ability to prescribe these changes also reflects the likelihood that they will need to change from time to time and will need to commence at short notice.

Three notes will be included at the end of subclause 145(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the *Criminal Code* and clauses 367, 368 and 369 of the Bill. The sections specified in the *Criminal Code* and the clauses in the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements
of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Note 2 will refer the reader to paragraphs 127(1)(j) and 138(1)(j) of the Bill. The note will clarify that the Secretary may suspend or revoke the registration of the establishment if the occupier fails to comply with subclause 145(2) of the Bill. It is intended that the Secretary could suspend or revoke the registration under paragraphs 127(1)(j) and 138(1)(j) of the Bill, in addition to any civil penalty imposed under subclause 145(3).

Note 3 will provide that clause 145 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive additional or corrected information in relation to an application for a registered establishment and, if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This information would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill, and would not result in criminal or civil proceedings against the person who provided the information.

Subclause 145(3) will provide that a person will be liable to a civil penalty if the person is required to give the Secretary information under subclause 145(2) and the person fails to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to an occupier not providing corrected or additional information to the Secretary. Such conduct may impede the effective regulation of exports under the Bill. It will be necessary for the Secretary to have relevant and correct information to determine whether a registration should remain in place. Failure to provide this information may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

Clause 146 Notice of changes to occupier of registered establishment

Subclause 146(1) will require the occupier of a registered establishment to notify the Secretary in writing as soon as practicable after any of the following events occurs:

- there is a change in the occupier’s business structure;
- if the occupier is an individual—the individual enters into a personal insolvency agreement under Part X of the Bankruptcy Act;
- if the occupier is a corporation—the corporation enters into administration (within the meaning of section 435C of the Corporations Act) or is to be wound up;
- there is a change in the trading name, business address or contact details of the occupier;
- any other event prescribed by the rules.
It is necessary for the Secretary to be notified of changes to the occupier so the Secretary can determine whether the ongoing registration of an establishment is appropriate. The provision of information may lead the Secretary to take certain action, such as suspension or revocation of a registration.

Enabling rules made under clause 432 of the Bill to prescribe other events for which the occupier will be required to notify the Secretary will give the Secretary the flexibility to respond to changes that may impact on the suitability of the occupier to carry out export operations that are not otherwise covered by subclause 146(1). The ability to prescribe these changes also reflects the likelihood that they may be specific to a kind of prescribed goods, export operations, or place of export, and will need to change from time to time and will need to commence at short notice.

The following two examples will be included at the end of subclause 146(1), to indicate what may be a change to the occupier’s business structure for the purpose of paragraph 146(1)(a):

- a change in a person who manages or controls export operations carried out at the establishment; and
- if the occupier is a partnership—a change in the membership of the partnership.

A note will be included at the end of subclause 146(1) that will provide that the Secretary may suspend or revoke the registration of an establishment if:

- the occupier of the establishment, or a person who manages or controls export operations carried out at the establishment, is not a fit and proper person (see paragraphs 127(1)(b) and 138(1)(b) of the Bill); or
- the occupier fails to comply with this clause (see paragraphs 127(1)(j) and 138(1)(j)) of the Bill.

Subclause 146(2) will provide that a person will be liable to a civil penalty if the person is required to notify the Secretary of an event or circumstances under subclause 146(1) and fails to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to an occupier not providing the information on the changes. It will be necessary for the Secretary to be aware of events or changes to determine whether any action needs to be taken in relation to the registered establishment. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

### Clause 147 Notice of person ceasing to be occupier of registered establishment

Clause 147 will deal with the requirement to notify the Secretary in circumstances where a person ceases to be an occupier of a registered establishment and sets a penalty for failing to do so.
Subclause 147(1) will provide that if a person in whose name an establishment is registered *(former occupier)* ceases to operate the business or manage or control export operations carried out at the establishment, the former occupier must, as soon as practicable after ceasing, notify the Secretary, in writing, of that fact. Subclause 147(1) will also provide that the notice must also include contact details for the former occupier.

Subclause 147(2) will provide that if a former occupier ceases to operate the business or manage or control export operations, the registration will be taken to have been revoked at the earlier of:

- the end of the day a notice under subclause 147(1) advising of the cessation is received by the Secretary; or
- the end of the seventh day after the day the former occupier ceased to operate the business or manage or control export operations carried out at the establishment.

The reason for revoking the registration of an establishment in circumstances where the former occupier ceases to operate the business or manage or control export operations carried out at the establishment is that the registration is assessed on the basis of the person who applied for the registration. If another person wants to take over as the occupier of the registered establishment, they will have to make a new application for registration of the establishment (see Part 2 of Chapter 4 of the Bill).

Subclause 147(3) will provide that a person will be liable to a civil penalty if the person is required to notify the Secretary that they have ceased to be the occupier of a registered establishment under subclause 147(1) and they fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to the former occupier for not notifying the Secretary of the change in occupier. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

**PART 8—OTHER MATTERS**

**Clause 148 Register of registered establishments**

Subclause 148(1) will require the Secretary to keep a register of information about establishments that are registered under Chapter 4. Subclauses 148(2) and 148(3) will provide that the register may be kept at a place and in a form that the Secretary determines and the register may be kept by electronic means. The register must also include the information in relation to a registered establishment prescribed by the rules made under clause 432 of the Bill for the purposes of clause 148.

Enabling the rules made under clause 432 of the Bill to prescribe the information required in a register will provide the Secretary with the flexibility to determine the kind of information
that is appropriate. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that the information required may need to change from time to time and will need to commence at short notice.

The purpose of the register is to ensure that exported goods are traceable back to the establishment where they were prepared or produced.

Chapter 5—Approved arrangements

PART 1—INTRODUCTION

Clause 149 Simplified outline of this Chapter

Clause 149 will provide a simplified outline of Chapter 5 of the Bill. Chapter 5 will provide for a range of matters that will relate to approved arrangements, including applications for the approval of arrangements, conditions of the arrangements, renewal, suspension and obligations of the holder of arrangements. Approved arrangements are one of the regulatory controls provided for in the Bill that allow people in the export system to take some responsibility for meeting requirements while enabling the Secretary to have regulatory oversight of their export operations and activities. Provisions in Chapter 5 will enable the rules made under clause 432 of the Bill to prescribe requirements that will apply before an arrangement will be approved and conditions in relation to certain matters covered by the arrangement.

The simplified outline is included to assist the reader to understand the substantive clauses of Chapter 5; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

PART 2—APPROVAL OF PROPOSED ARRANGEMENT

Clause 150 Application for approval of proposed arrangement

Subclause 150(1) will enable a person to apply to the Secretary to approve a proposed arrangement for a kind of export operations in relation to a kind of prescribed goods.

Paragraph 150(2)(a) will provide that the application must be recorded in writing in one or more documents. Paragraph 150(2)(b) will provide that the application may cover more than one kind of export operation and more than one kind of prescribed goods. For example, an arrangement may cover how the holder will comply with the requirements of the Bill in relation to preparing meat for export as well as packing and storing the meat for export.

Paragraph 150(2)(c) will provide that the arrangement may, but is not be required to, specify one or more places to which the goods may be exported. This will enable a particular market to be included in the application for the arrangement, but this will not be mandatory.

Two notes will be included at the end of subclause 150 of the Bill. Note 1 will advise that the export of a kind of prescribed goods may be prohibited unless the exporter holds an approved arrangement in relation to the goods. Note 1 will also refer the reader to clause 29 of the Bill and rules made under clause 432 of the Bill for the purposes of clause 29. Note 2 will refer the reader to clause 377 of the Bill, which will set out the general requirements for applications in the Bill, including applications for approval of arrangements.
Clause 151 Secretary must decide whether to approve proposed arrangement

Subclause 151(1) will provide that, on receiving an application under clause 150 of the Bill to approve a proposed arrangement, the Secretary must decide to approve the arrangement or refuse to approve the arrangement.

Four notes will be included at the end of subclause 151(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to applications, including applications to approve a proposed arrangement.

Note 2 will clarify that, if the application will be for more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places, the proposed arrangement may cover one or more of the export operations, in relation to one or more of those kinds of goods, for export to one or more of those places.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period (which will be prescribed by the rules), the Secretary will be taken to have refused the application at the end of that period. Enabling the rules to prescribe this period will allow the Secretary to set an appropriate period for the consideration of the application.

Note 4 will advise the reader that a decision to refuse to approve a proposed arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 151(2) will provide that the Secretary may approve an arrangement if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that the following matters are met:

- if the applicant is a kind of person who will be required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 5—the applicant is a fit and proper person;
- either:
  - all relevant Commonwealth liabilities of the applicant have been paid, or are taken to have been paid; or
  - if one or more relevant Commonwealth liabilities of the applicant have not been paid, the non-payment is due to exceptional circumstances;
- carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the arrangement, the arrangement will ensure compliance with the Bill in relation to the export operations and goods and that importing country requirements will be met;
- any other requirement prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before a proposed arrangement will be approved will provide the Secretary with the flexibility to determine what other requirements may be necessary. This may, for example, be on a commodity or market-specific basis.

A note will be included at the end of subclause 151(2) that will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to be have been paid in certain circumstances.
Subclause 151(3) will enable the Secretary to set an expiry date for an approved arrangement if the Secretary considers it is appropriate to do so. Two notes will be included at the end of subclause 151(3). Note 1 will refer the reader to subclause 154(1) of the Bill. The note will provide that if there is no expiry date, the approved arrangement will remain in force unless it is revoked. Note 2 will advise the reader that a decision to set an expiry date for the arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 151(4) will enable the Secretary to set an expiry date for the approved arrangement under subclause 151(3) even if rules made for the purposes of subclause 154(5) apply in relation to the approved arrangement.

For example, rules made for the purposes of subclause 154(5) may provide for an expiry date for approved arrangements for a particular kind of export operations, as ten years from the date of approval. This would not prevent the Secretary from setting a different expiry date for that arrangement under subclause 151(4), for example five years from the date of approval, if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for specific applications, even if rules are made setting an expiry date for approved arrangements for a particular kind of export operations.

**Clause 152 Conditions of an approved arrangement**

Subclause 152(1) will provide that, if the Secretary approves a proposed arrangement in relation to a kind of export operations in relation to a kind of prescribed goods, the arrangement will be subject to the following:

- the conditions that will be provided by the Bill;
- the conditions that will be prescribed by the rules (other than those conditions which, for a particular arrangement, the Secretary decides are not to apply). The conditions that are not to apply to a particular arrangement will be required to be set out in the notice of decision given to the applicant under clause 153 of the Bill;
- any additional conditions that the Secretary considers are appropriate for the arrangement under consideration. These additional conditions will be required to be set out in the notice of decision given to the applicant under clause 153 of the Bill.

Four notes will be included at the end of subclause 152(1). Note 1 will refer the reader to clause 184 of the Bill, which will provide that the holder of an approved arrangement may commit an offence or be liable to a civil penalty if a condition of the approved arrangement is contravened. Note 2 will refer the reader to paragraphs 171(1)(d) and 179(1)(d) of the Bill, which will provide that the approved arrangement may be suspended or revoked if a condition of the approved arrangement is contravened. Note 3 will advise the reader that a decision to approve a proposed arrangement subject to additional conditions will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to Part 7 of Chapter 5 of the Bill, which will set out additional obligations of the holder of an approved arrangement.

Subclause 152(2) will provide examples of what the rules may prescribe. These examples will be conditions in relation to:

- the holder of an approved arrangement;
- a kind of export operations;
- a kind of prescribed goods;
- importing country requirements relating to a kind of export operations or a kind of prescribed goods.

Subclause 152(3) will provide that, without limiting paragraphs 152(1)(b) or (c), the rules may prescribe conditions, and the Secretary may impose conditions, that will be required to be complied with before or after the export of the goods to which the conditions relate, including conditions that apply up until the delivery of the goods to their final overseas destination.

Enabling the rules made under clause 432 of the Bill to prescribe any conditions that the Secretary considers are necessary and appropriate for the type of arrangements under consideration, will provide the Secretary with the flexibility to specify matters that may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers are appropriate for the particular approved arrangement under consideration will give the Secretary the flexibility to determine additional conditions, relevant to a particular approved arrangement, on a case-by-case basis.

Subclause 152(4) will provide that, for the purposes of the Bill, conditions to which the arrangement will be subject under clause 152 or clause 157 of the Bill (conditions of renewed approved arrangement) are conditions of the arrangement. Contravention of the conditions of an approved arrangement may be grounds for suspending an approved arrangement under paragraph 171(1)(d) of the Bill or revoking the approved arrangement under paragraph 179(1)(d) of the Bill.

**Clause 153 Notice of decision**

Clause 153 will provide that if the Secretary approves a proposed arrangement, then the Secretary must give the applicant a written notice that sets out the information specified in clause 153. The information that will be required to be included in the written notice is the following:

- the date the approved arrangement takes effect;
- that the approved arrangement will remain in force indefinitely, or the expiry date for the approved arrangement;
- any conditions that are prescribed by the rules that are not conditions of the approved arrangement;
- any additional conditions on the approved arrangement; and
- any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the notice of the decision made under clause 151 of the Bill will provide the Secretary with the flexibility to ensure that the holder of the approved arrangement will be provided with all relevant information in relation to the arrangement. This may be relevant to, for example, a specific commodity or market.

Providing a notice under clause 153 will inform the applicant of the Secretary’s decision as well as the terms under which the arrangement will be approved. The notice will not set out
all conditions or requirements that are applicable to the approved arrangement, but will identify any conditions in the rules that do not apply, as well any additional conditions of the arrangement that will be applicable to the application and that are not specified in the rules. Providing this information will enable the applicant to identify the conditions of the approved arrangement that they will be required to comply with.

**Clause 154  Period of effect of approved arrangement**

Clause 154 will provide certainty to the holder of an approved arrangement about the period of effect of the arrangement and the circumstances, such as a revocation or renewal, which may change this period.

**Approved arrangements that have no expiry date**

Subclause 154(1) will provide that if there is no expiry date set for the approved arrangement, the approved arrangement will remain in force unless it is revoked under Part 6 of Chapter 5 of the Bill, or is taken to be revoked under clause 188 of the Bill.

**Approved arrangements that have an expiry date**

Subclause 154(2) will provide that if there is an expiry date for the approved arrangement, the approved arrangement will remain in force until the end of that date unless the approved arrangement is renewed under Part 3 of Chapter 5 of the Bill, revoked under Part 6 of Chapter 5 of the Bill or is taken to have been revoked under clause 188 of the Bill, on or before that date.

Subclause 154(3) will provide that there is an expiry date for an approved arrangement if rules made for the purposes of subclause 154(5) apply in relation to the approved arrangement or an expiry date for the approved arrangement set under subclauses 151(3) or 156(3) or paragraph 165(1)(c) or (d) of the Bill is in force in relation to the approved arrangement.

Subclause 154(4) will provide the **expiry date** for the approved arrangement is either:

- the last day of the period prescribed by the rules, if rules made for the purposes of subclause 154(5) apply in relation to the approved arrangement and no expiry date set under subclause 151(3) or 156(3) or paragraph 165(1)(c) or (d) is in force in relation to the approved arrangement; or

- the expiry date set under subclause 151(3) or 156(3) or paragraph 165(1)(c) or (d) is in force in relation to the approved arrangement.

**Rules may prescribe period of effect of approved arrangement**

Subclause 154(5) will provide that the rules may prescribe the period during which the approved arrangement remains in force. The rules may apply in relation to the approved arrangements generally or approved arrangements for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.
PART 3—RENEWAL OF APPROVED ARRANGEMENT

Clause 155 Application to renew approved arrangement

Subclause 155(1) will be an application provision that will provide that clause 155 will apply in relation to an approved arrangement, including one that has been suspended, if there is an expiry date for the approved arrangement.

A note will be included at the end of subclause 155(1) that will refer the reader to subclauses 154(3) or 154(4) in relation to the expiry date for an approved arrangement.

Subclause 155(2) will provide that, if there is an expiry date for an approved arrangement, the holder of the approved arrangement may apply to the Secretary to renew the arrangement. A note will be included at the end of subclause 155(2) that will refer the reader to clause 377 of the Bill, which will set out the general requirements for applications in the Bill, including applications to renew an approved arrangement.

Subclause 155(3) will provide that the application for renewal may relate to more than one approved arrangement.

Subclause 155(4) will provide that the application for renewal must be made within the period prescribed by the rules made under clause 432 of the Bill or any longer period allowed by the Secretary. Enabling the rules to prescribe this period will provide the Secretary with the flexibility to set an appropriate period for the consideration of the application.

Subclause 155(5) will provide that if the application for renewal is made after the period applying under subclause 155(4), then it will be taken to be a new application to approve an arrangement and the provisions in Part 2 of Chapter 5 of the Bill (which relate to new applications for proposed arrangements) will apply in relation to the application, and the other provisions in Part 3 of Chapter 5 of the Bill (which relate to applications for renewal of the approved arrangements) will not apply.

Clause 156 Secretary must decide whether to renew approved arrangement

Subclause 156(1) will provide that, if the Secretary receives an application to renew an approved arrangement under clause 155 of the Bill, the Secretary must decide either to renew, or to refuse to renew, the approved arrangement.

Four notes will be included at the end of subclause 156(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications to renew an approved arrangement. Clause 379 of the Bill will set out the Secretary’s powers in dealing with applications and the time within which a decision must be made.

Note 2 will clarify that if the application is made to renew more than one approved arrangement, the Secretary may renew some or all of the approved arrangements.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period, the Secretary will be taken to have refused the application at the end of that period. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.
Note 4 will advise that a decision to refuse to renew the approved arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 156(2) will provide that the Secretary may refuse to renew an approved arrangement if the Secretary is not satisfied, having regard to any matter the Secretary considers relevant, of one of more of the following:

- if the holder of the approved arrangement is a kind of person who will be required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of this Chapter—the holder is a fit and proper person;
- all relevant Commonwealth liabilities of the holder have been paid or, if they have not been paid, the non-payment is due to exceptional circumstances;
- the holder of the approved arrangement has complied with the requirements of the Bill in relation to the export operations and prescribed goods covered by the approved arrangement;
- the conditions of the approved arrangement have been, and are being, complied with;
- carrying out a kind of export operations in relation to a kind of goods in accordance with the approved arrangement will ensure compliance with the requirements of the Bill in relation to those export operations and goods and that importing country requirements will be met;
- any other requirement prescribed by the rules is met.

Enabling the rules made under clause 432 of the Bill to prescribe any additional grounds that must be met before an approved arrangement will be renewed will provide the Secretary with the flexibility to ensure that the approved arrangement will continue to be appropriate for the matters covered by the approved arrangement and that it will meet the requirements of the Bill before it will be renewed.

Unlike approving an initial application for a proposed arrangement, which requires the Secretary to be satisfied that all requirements prescribed by the rules for the purposes of subclause 151(2) of the Bill have been met, subclause 156(2) will only require the Secretary to consider whether there is evidence of non-compliance and hence grounds for refusing the request to renew. This approach will ensure that approved arrangements will only be renewed in circumstances where there is a history of compliance by the holder of the arrangement; the requirements and conditions of the approved arrangement have been complied with; and there are no outstanding financial liabilities.

A note will be included at the end of subclause 156(2) to refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to be have been paid in certain circumstances.

If the Secretary renews the approved arrangement, subclause 156(3) will enable the Secretary to set an expiry date for the approved arrangement, if the Secretary considers it appropriate. Two notes will be included at the end of subclause 156(3). Note 1 will refer the reader to subclause 154(1) of the Bill, and will clarify that if there is no expiry date for the approved arrangement, the approved arrangement will remain in force unless it is revoked. Note 2 will advise the reader that a decision to set an expiry date for the renewed arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.
Subclause 156(4) will enable the Secretary to set an expiry date for the renewed approved arrangement under subclause 156(3) even if rules made for the purposes of subclause 154(5) apply in relation to the approved arrangement. For example, rules made for the purposes of subclause 154(5) may provide for an expiry date for approved arrangements, as ten years from the date of approval. This would not prevent the Secretary from setting a different expiry date for that arrangement under subclause 156(4), for example five years from the date of approval, if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for specific renewal applications, even if rules are made setting an expiry date for applications for approved arrangements.

Clause 157 Conditions of renewed approved arrangement

As with the initial approval of the proposed arrangement (see clause 152 of the Bill), subclause 157(1) will provide that, if the Secretary renews the approved arrangement, the arrangement will be subject to:

- the conditions that will be provided by the Bill;
- the conditions that will be prescribed by the rules (other than those conditions which the Secretary decides are not to apply to a particular renewal). The conditions that are not to apply to a particular renewal will be required to be set out in the notice of decision given to the applicant under clause 158 of the Bill; and
- any additional conditions that the Secretary considers are appropriate for the renewal application under consideration. These additional conditions will be required to be set out in the notice of decision given to the applicant under clause 158 of the Bill.

Enabling the rules made under clause 432 of the Bill to prescribe any conditions that the Secretary considers are necessary and appropriate for the type of arrangements under consideration for renewal, and will provide the Secretary with the flexibility to specify matters that may be relevant to, for example, the renewal of an arrangement for a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers are appropriate for the particular approved arrangement under consideration for renewal will give the Secretary the flexibility to determine additional conditions, relevant to a particular approved arrangement, on a case-by-case basis.

Four notes will be included at the end of subclause 157(1). Note 1 will refer the reader to clause 184 of the Bill, which will provide that the holder of an approved arrangement may commit an offence or be liable to a civil penalty if a condition of the approved arrangement is contravened. Note 2 will refer the reader to paragraphs 171(1)(d) and 179(1)(d) of the Bill, which will provide that the approved arrangement may be suspended or revoked if a condition of the approved arrangement is contravened. Note 3 will advise the reader that a decision to renew an approved arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 4 will refer the reader to Part 7 of Chapter 5 of the Bill, which will set out additional obligations of the holder of an approved arrangement.

Subclause 157(2) will provide that, without limiting paragraph 157(1)(c), the Secretary may impose conditions that are required to be complied with before or after the export of the goods
to which the conditions relate, including conditions that apply up until the delivery of the goods to their final overseas destination.

**Clause 158 Notice of decision**

Subclause 158 will provide that if the approved arrangement is renewed, the Secretary will be required to give the holder of the approved arrangement a written notice that sets out the relevant information specified in clause 153 of the Bill. This will ensure that the holder of the approved arrangement will be aware of all matters in relation to the renewed arrangement, including any conditions that may be imposed.

**PART 4—VARIATION OF APPROVED ARRANGEMENT**

**Division 1—Variations by holder**

**Subdivision A—Non-significant variations**

**Clause 159 Holder may make non-significant variations of approved arrangement**

Subclause 159(1) will enable the holder of an approved arrangement to implement a variation, or two or more variations, of the approved arrangement if:

- the variation is, or the variations are, not an alternative regulatory arrangement to within the meaning of subclause 379B(1); and
- the holder and the Secretary consider that the variation, or the combined effect of the variations, will be not significant (having regard to the matters referred to in clause 164 of the Bill).

It will be necessary to exclude variations that would give effect to an alternative regulatory arrangement referred to in paragraph 161(1)(a) of the Bill (such as alternative standards and procedures that relate to export operations or kinds of goods) because such variations may be considered to be insignificant, having regard to the matters listed in clause 164 of the Bill. Without excluding them from clause 159, there would be a risk that they may be implemented without approval. As this will not be appropriate, it will be best practice for variations to alternative regulatory arrangements to be approved by the Secretary before they are implemented. This will provide assurance that importing country requirements and other requirements under the Bill will continue to be met.

Subclause 159(2) will provide that if the holder of an approved arrangement implements one or more variations under subclause 159(1), the holder must, as soon as practicable after doing so, make a written record of each variation, and the reasons for the variation. This will ensure that there are accurate records of the variations made to an approved arrangement which are essential to maintaining the integrity of the export supply chain.

A note will be included at the end of subclause 159(2) that will refer the reader to paragraphs 171(1)(k) and 179(1)(k) of the Bill, which will enable the Secretary to suspend or revoke the approved arrangement if the holder contravenes subclause 159(2).

Subclause 159(3) will provide that if the holder of an approved arrangement implements a variation of the approved arrangement and makes a written record of the variation as required by subclause 159(2), then, despite any other provision of the Bill, a person does not commit
an offence, and will be not liable to a civil penalty, only because the variation was implemented before the written record was made.

Subclause 159(4) will provide that the holder of an approved arrangement will be liable to a civil penalty if the holder fails to make a written record of each variation as required by subclause 159(2). The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 159. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 159 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to failing to make a written record of the variation. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

**Clause 160 Date of effect of varied approved arrangement**

Clause 160 will provide that if the holder of an approved arrangement implements a variation of the approved arrangement and the holder makes a written record of the variation, the approved arrangement will be taken to have been varied on the date the record of the variation was made under subclause 159(2) of the Bill.

A note will be included at the end of clause 160 that will clarify that the approved arrangement, as varied, will remain in force as provided by clause 154 of the Bill.

**Subdivision B—Significant variations and variation of conditions**

**Clause 161 Application by holder for approval of approved alternative regulatory arrangement or other significant variation or to vary conditions**

Subclause 161(1) will provide that the holder of an approved arrangement may apply to the Secretary to approve a variation of certain matters covered by the approved arrangement, including to:

- approve a variation of the approved arrangement to implement an alternative regulatory arrangement approved under paragraph 379C(1)(a); or
- approve any other variation or variations of the approved arrangement if the holder and the Secretary consider that the variation, or the combined effect of the variations, is significant (having regard to clause 164 of the Bill); or
- vary the conditions of the approved arrangement.

Allowing the holder of an approved arrangement to apply to vary the arrangement will enable the Secretary to respond to the changing needs and requirements of the holder, allowing a flexible approach to the regulation of approved arrangements.

A note will be included at the end of subclause 161(1) that will refer the reader to clause 377 of the Bill, which will set out the requirements for applications, including an application to
vary an approved arrangement. It will also clarify that a single application may be made to approve a variation of an approved arrangement and to renew the approved arrangement.

Subclause 161(2) will provide that, on receiving an application, the Secretary must decide either to make the variation or to refuse to make the variation.

Three notes will be included at the end of subclause 161(2). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications.

Note 2 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period, the Secretary will be taken to have refused the application at the end of that period. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.

Note 3 will advise the reader that a decision to refuse to make a variation will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 161(3) will provide that the Secretary may refuse to approve the variation, or vary the conditions, if the Secretary is not satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:

- all relevant Commonwealth liabilities of the holder of the approved arrangement have been paid or, if they have not been paid, the non-payment is due to exceptional circumstances;
- carrying out a kind of export operations in relation to a kind of goods in accordance with the approved arrangement will ensure compliance with the requirements of the Bill, goods and will ensure importing country requirements will be met, and the integrity of the goods;
- any other requirements prescribed by the rules will be met.

Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before an approved arrangement may be varied may be necessary and appropriate for the type of variation under consideration and will provide the Secretary with the flexibility to specify matters that may be relevant to, for example, changes in a particular commodity or market.

Two notes will be included at the end of subclause 161(3). Note 1 will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to be have been paid in certain circumstances.

Note 2 will refer the reader to subclause 161(1) and clause 163 of the Bill, which will provide that the holder of an approved arrangement may commit an offence or be liable to a civil penalty if a variation of the approved arrangement or the conditions referred to in subclause 161(1) is implemented, and the variation has not been approved or the holder has not been given notice of the approval.
Clause 162    Notice of variation

Subclause 162(1) will provide that if the Secretary approves a variation of an approved arrangement or varies the conditions of the approved arrangement under paragraph 161(2)(a) of the Bill, then the Secretary must give the holder of the approved arrangement written notice of the variation or approval.

Subclause 162(2) will provide that the notice must include the following information:

- details of the variation that has been approved;
- if the variation is of the conditions of the approved arrangement—the varied conditions;
- the date the variation takes effect; and
- any other information prescribed by the rules made under clause 432 of the Bill for the purposes of clause 162.

Providing a notice under this clause will inform the holder of the approved arrangement of the Secretary’s decision to approve the variation, as well as the terms under which the variation or approval will be given. Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the notice of the decision made under clause 162 of the Bill will provide the Secretary with the flexibility to ensure that the holder of the approved arrangement will be provided with all relevant information in relation to the variation of the arrangement. This may be relevant to, for example, a specific commodity or market.

A note will be included at the end of subclause 162(2) that will advise the reader that the approved arrangement, as varied, will remain in force as provided for by clause 154 of the Bill.

Clause 163    Varied approved arrangement must not be implemented unless variation approved etc.

Clause 163 will provide that penalties may be imposed in circumstances where a variation to an approved arrangement that has not been approved under clause 162 of the Bill is implemented.

Subclause 163(1) will provide that the holder of an approved arrangement will contravene subclause 163(1) if a variation of the approved arrangement or the conditions of approved arrangement referred to in subclause 161(1) of the Bill is implemented and:

- that variation has not been approved under paragraph 161(2)(a) of the Bill; or
- the variation has been approved under paragraph 161(2)(a) of the Bill but the Secretary has not given the holder of the approved arrangement notice of the approval under clause 162 of the Bill.

Two notes will be included at the end of subclause 163(1). Note 1 will provide that the physical elements of an offence against subclause 163(2) will be set out in subclause 163(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence. Note 2 will provide that the Secretary may suspend or revoke the approved arrangement if the holder contravenes subclause 163(1), and will refer the reader to paragraphs 171(1)(k) and 179(1)(k) of the Bill, which give the Secretary the power to suspend or revoke approved arrangements.
The penalties for both the fault-based offence and the civil penalty provision in these clauses reflect the seriousness of implementing a variation to an approved arrangement without approval. Conduct that contravenes the requirements that will be set out in this clause may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Subclause 163(2) will provide that the holder of an approved arrangement will commit a fault-based offence if the holder contravenes subclause 163(2). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 163(1) will be 600 penalty units.

Subclause 163(3) will provide that the holder of the approved arrangement will be liable to a civil penalty if the holder contravenes subclause 163(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 163(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 163(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 163(3) of 240 penalty units will be twice as high as the penalty available for the criminal offence. The penalty is intended to act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Subdivision C—Matters relating to whether proposed variation of approved arrangement is significant

Clause 164 Matters to which regard must be had in considering whether proposed variation of approved arrangement is significant

Clause 164 will provide the matters to which the Secretary will be required to have regard to when considering whether proposed variations to approved arrangements made under paragraphs 159(1)(b) and 161(1)(b) of the Bill are significant.

Subclause 164(1) is an application provision, and provides that clause 164 has effect for the purposes of paragraphs 159(1)(b) and 161(1)(b).

Subclause 164(2) will provide that the matters to which the holder of an approved arrangement and the Secretary must have regard in considering whether a variation, or the combined effect of two or more variations, of the approved arrangement will be significant include:

- whether the variation, or the variations, may have the effect that carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement will no longer ensure:
compliance with the requirements of the Bill in relation to those export operations and goods; or
that importing country requirements relating to those export operations and goods will be met;

whether the variation, or the variations, may adversely affect the Secretary’s ability to accurately assess:
whether carrying out a kind of export operations in relation to a kind of prescribed goods in accordance with the arrangement will ensure the matters referred to in subparagraphs 164(2)(a)(i) and 164(2)(a)(ii); or
whether the integrity of a kind of prescribed goods covered by the approved arrangement can be ensured;

whether the variation, or any of the variations, is of a kind of export operations or a kind of prescribed goods covered by the arrangement, or is of a kind prescribed by the rules.

If the variation, or combination of variations, affects one or more of the matters prescribed in clause 164, the variation will be significant and must not be implemented without approval.

Enabling the rules made under clause 432 of the Bill to prescribe other types of variations to an approved arrangement that will be significant will provide the Secretary with the flexibility that will be necessary to adapt to changing issues, such as in relation to technology.

Clause 164 will enable the Secretary to maintain oversight of significant variations to ensure the variations to the approved arrangements will comply with the requirements under the Bill.

Division 2—Variation required or made by Secretary

Clause 165 Secretary may require approved arrangement to be varied or make certain variations of approved arrangement

Clause 165 will enable the Secretary to require the holder to do certain things or to vary matters, such as conditions, that are within the control of the Secretary. This clause will allow the Secretary to require the holder to do certain things, instead of allowing the Secretary to do things themselves, because the holder, and not the Secretary, owns the arrangement.

Subclause 165(1) will provide that the Secretary may do any of the following in relation to an approved arrangement:

• require the holder of the approved arrangement to vary any aspect of the approved arrangement, including so that it does not cover:
  o a kind of export operations; or
  o a kind of prescribed goods; or
  o if applicable, a place to which goods may be exported;
• vary the conditions of the approved arrangement (including by imposing new conditions);
• if there is no expiry date for the approved arrangement—set an expiry date;
• if there is an expiry date for the approved arrangement:
  o vary the expiry date; or
  o vary the arrangement by revoking the expiry date.
Two notes will be included at the end of subclause 165(1). Note 1 will provide that if the Secretary revokes the expiry date for the approved arrangement under paragraph 165(e), the approved arrangement will remain in force for the period prescribed by the rules, if rules made for the purposes of subclause 154(5) apply or indefinitely (unless revoked) if no such rules exist. Note 2 will advise the reader that certain decisions made under subclause 165(1) will be reviewable decisions, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Clause 381 of the Bill will provide that only decisions made under paragraphs 165(1)(a) (varying an aspect of the approved arrangement), 165(1)(b) (varying or adding new conditions), 165(1)(c) (setting an expiry date) and 165(1)(d) (setting an earlier expiry date) are reviewable decisions. These decisions are reviewable as they may impact on the interests of the holder of the approved arrangement. A decision made under paragraph 165(1)(e) (varying the approved arrangement by revoking the expiry date) is not a reviewable decision as it will benefit the holder of the approved arrangement.

Subclause 165(2) will provide that the Secretary may only:

- require the holder of the approved arrangement to vary any aspect of the approved arrangement;
- vary the conditions of the approved arrangement (including by imposing new conditions);
- set an expiry date (if there is no expiry date); or
- vary an expiry date;

if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by the approved arrangement cannot be ensured; or
- if the holder is a kind of person who will be required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 5—the holder is not a fit and proper person; or
- export operations covered by the approved arrangement have not been, or are not being, carried out in accordance with the approved arrangement, or a condition of the approved arrangement has been, or is being, contravened; or
- circumstances relating to a kind of export operations carried out in relation to a kind of prescribed goods covered by the approved arrangement have changed; or
- it is necessary to do so to ensure:
  - compliance with the requirements of the Bill in relation to the export operations and goods covered by the arrangement; and
  - that importing country requirements relating to the export operations and goods covered by the arrangement will be met; or
- an importing country requirement relating to a kind of prescribed goods covered by the approved arrangement has changed; or
- it is necessary to do so to take account of an event notified under clause 186 of the Bill or to correct a minor or technical error; or
- the arrangement needs to be varied for any other reason prescribed by the rules for the purposes of subclause 165(2).

The Secretary will be required to reasonably believe that one or more of grounds set out in 165(2) exists, before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far
as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standard for making a variation to an approved arrangement under the existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe any other reasons why an approved arrangement may need to be varied will provide the Secretary with the flexibility to accommodate the range of export operations, prescribed goods and places to which goods may be exported to which the arrangement may relate and will enable the Secretary to respond to changing export conditions.

_Note of certain proposed variations_

Subclause 165(3) will provide that the Secretary must not require the holder to vary the approved arrangement unless the Secretary has given a written notice to the holder of the approved arrangement in accordance with subclause 165(4).

Subclause 165(4) will provide that the written notice must:

- specify each proposed variation; and
- specify the grounds for each proposed variation; and
- subject to subclause 165(5), request the holder of the approved arrangement to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
- include a statement setting out the holder’s right to seek review of a decision to make the proposed variation.

Subclause 165(5) will provide that if the Secretary reasonably believes that the grounds for varying the approved arrangement are serious and urgent, then the Secretary will not be required to include the request in paragraph 165(4)(c) in the notice issued under subclause 165(3). However, the notice of proposed suspension must still be given. Subclause 165(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed variation, the Secretary must give a notice of the required variations in accordance with clause 166 of the Bill. A decision to make the variation will remain a reviewable decision.

**Clause 166 Variations required by the Secretary**

Clause 166 will provide the circumstances in which variations of the approved arrangement will be required by the Secretary. This can be contrasted from clause 168 of the Bill, which will provide the circumstances in which variations of the approved arrangement will be made by the Secretary.

Subclause 166(1) will provide that, if the Secretary requires the holder of an approved arrangement to make a variation, the Secretary must give the holder of the approved arrangement a written notice (a _variation notice_) requiring the holder to vary the approved arrangement as specified in the variation notice and to give, or make available, the varied arrangement to the Secretary for evaluation by the date specified in the variation notice.

A note will be included at the end of subclause 166(1) that will provide that, if the holder of an approved arrangement does not comply with the variation notice, the Secretary may
suspend or revoke the approved arrangement, and will refer the reader to paragraphs 171(1)(k) and 179(1)(k) of the Bill.

Subclause 166(2) will provide that if the holder of the approved arrangement complies with the variation notice, the holder will be taken to have applied to the Secretary to approve the varied approved arrangement. That is, while the Secretary may require a variation, it is up to the holder to implement the variation and this will be taken to be an application to approve the variation to the arrangement.

Secretary must decide whether to approve varied approved arrangement

Subclause 166(3) will provide that, if the varied approved arrangement is either given to or made available to the Secretary, the Secretary must decide either to approve the varied approved arrangement or to refuse to approve the varied approved arrangement.

Subclause 166(4) will enable the Secretary to approve the varied approved arrangement if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that all the variations specified in the variation notice have been made. For example, the Secretary would take into consideration whether the variations have been made to achieve the required outcome.

Three notes will be included at the end of subclause 166(4). Note 1 will refer the reader to clause 379 of the Bill for matters relating to dealing with applications. Note 2 will provide that, if the Secretary does not make a decision in relation to the application within the consideration period for the application, the Secretary will be taken to have refused the application at the end of that period, and will refer the reader to subclause 379(2) of the Bill. Note 3 will advise the reader that a decision to refuse to approve a varied approved arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. The note will also clarify that the Secretary must give the holder of the varied approved arrangement written notice of the decision, and will refer the reader to clause 382 of the Bill.

Subclause 166(5) will enable the Secretary to approve the varied approved arrangement subject to any conditions the Secretary considers appropriate. A note will be included at the end of subclause 166(5) that will advise the reader that a decision to approve a varied approved arrangement subject to conditions will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Notice of approval of varied approved arrangement

Subclause 166(6) will provide that if the Secretary approves the varied approved arrangement, the Secretary must give the holder of the varied approved arrangement a written notice stating the date the varied arrangement takes effect and any other information prescribed by the rules made under clause 432 of the Bill for the purposes of subclause 166(6).

A note will be included at the end of the subclause 166(6) that will advise the reader that the varied approved arrangement will remain in force as provided by clause 154 of the Bill.

Enabling the rules to set out what matters must be set out in the notice of approval of a varied approved arrangement will give the Secretary the flexibility to identify all matters that may be relevant to that particular type of variation under consideration. This may be on a commodity or market specific basis.
When varied approved arrangement takes effect

Subclause 166(7) will provide that if the holder of an approved arrangement was given a notice (a *show cause notice*) under subclause 165(3) of the Bill as to why the variation should not be made under subclause 165(3) of the Bill that included the request referred to in paragraph 165(4)(c) of the Bill, the varied approved arrangement must not take effect before the earlier of:

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

The effect of this is that the Secretary will be prevented from taking any action to implement the variation during the 14 day period. If the holder of the approved arrangement does not respond within the 14 day period, the variation will be able to be implemented. If the holder responds within the 14 day period, the Secretary will only be able to make a variation that is within the Secretary’s control (such as to vary a condition of the arrangement). The Secretary will not be able to implement a variation to the arrangement itself, as this is within the control of the holder of the approved arrangement.

The consequence is that the holder is no longer operating under an arrangement that has been approved by the Secretary and this may lead to suspension or revocation of that arrangement because the integrity of the prescribed goods covered by the arrangement cannot be ensured (see paragraphs 171(1)(a) and 179(1)(a) of the Bill). The holder of the approved arrangement may also commit an offence if exporting the goods in accordance with an approved arrangement that is no longer approved contravenes an approved export condition.

A note will be included at the end of subclause 166(7) that will advise the reader that the varied approved arrangement will remain in force as provided by clause 154 of the Bill.

Clause 167 Varied approved arrangement must not be implemented unless approved etc.

Clause 167 will provide that if the holder of an approved arrangement has been given a variation notice in relation to the approved arrangement under subclause 166(1) of the Bill, the holder must not implement a variation specified in the variation notice unless the varied approved arrangement has been approved under paragraph 166(3)(a) of the Bill and the Secretary has given the holder written notice of the approval under subclause 166(6) of the Bill.

A note will be included at the end of clause 167 that will provide that, if the holder contravenes clause 167, the Secretary may either:

- suspend or revoke the approved arrangement, referring the reader to paragraph 171(1)(k) and 179(1)(k) of the Bill; or
- refuse to issue a government certificate in relation to a kind of goods covered by the approved arrangement, referring the reader to clause 64 of the Bill, or refuse to issue an export permit for the goods, referring the reader to clause 225 of the Bill.

Clause 168 Notice of variations made by the Secretary

Clause 168 will provide the circumstances in which variations of the approved arrangement will be made by the Secretary. This can be contrasted from clause 166 of the Bill, which will
provide the circumstances when variations of the approved arrangement will be required by the Secretary.

Subclause 168(1) will provide that if the Secretary makes a variation in relation to an approved arrangement under paragraphs 165(1)(b), 165(1)(c), 165(1)(d) or 165(1)(e) of the Bill, the Secretary must give the holder of the approved arrangement written notice of the variation.

Subclause 168(2) will provide that the notice must include the following information:

- if the variation is of the conditions of the approved arrangement—the varied conditions of the arrangement;
- if the variation affects the period of effect of the approved arrangement—the expiry date for the approved arrangement under paragraph 154(4)(a) or 154(4)(b), or if there is no expiry date for the approved arrangement—that the approved arrangement remains in force unless it is revoked;
- the date the variation takes effect;
- any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the notice of the variation made under clause 168 will provide the Secretary with the flexibility to ensure that the holder of the approved arrangement will be provided with all relevant information in relation to the variation.

Providing a notice under this clause will inform the holder of the approved arrangement of the Secretary’s decision to make a variation, as well as the terms under which the variation will be given.

Subclause 168(3) will provide that, if the Secretary has given a notice (a show cause notice) to the holder of the approved arrangement under subclause 165(3) of the Bill that included the request referred to in paragraph 165(4)(c), the variation must not take effect until the earlier of the following:

- the day after any response by the holder of the arrangement is received by the Secretary;
- the end of the 14 day period after the show cause notice was given.

The effect of this will be that the Secretary will be prevented from taking any action to vary the approved arrangement during the 14 day period. If the holder of the arrangement does not respond within the 14 day period, then the variation will be able to be made. If the holder responds within the 14 day period, the Secretary will be required to consider the holder’s response when deciding whether to vary the approved arrangement as proposed.

A note will be included after the end of subclause 168(3) that will advise the reader that the varied approved arrangement will remain in force as provided by clause 154 of the Bill.
PART 5—SUSPENSION OF APPROVED ARRANGEMENT

Division 1—Suspension requested by holder

Clause 169 Holder may request suspension

Subclause 169(1) will provide that, subject to subclause 169(2), the holder of an approved arrangement may request the Secretary to suspend the approved arrangement, or part of the approved arrangement, in relation to a matter covered by the approved arrangement.

A note will be included at the end of subclause 169(1) that will provide an example of situations in which a holder of an approved arrangement might make a request under the subclause. The note will provide that a request might be made under the subclause if, for example, the holder does not have personnel with appropriate qualifications or expertise to carry out a particular kind of export operations in relation to a kind of prescribed goods in accordance with the approved arrangement.

Subclause 169(2) will provide that a request may be made under subclause 169(1) only in the circumstances prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe the appropriate circumstances in which the holder of an approved arrangement may be able to request voluntary suspension of the arrangement will provide the Secretary with flexibility to determine matters on, for example, a market or commodity-specific basis.

Subclause 169(3) will provide that a request to suspend an arrangement under subclause 169(1) may relate to more than one kind of export operations, kind of prescribed goods or, if applicable, place to which goods may be exported under the arrangement.

Subclause 169(4) will require the request under subclause 169(1) to be in writing and to:

- specify whether the whole or a specified part of the approved arrangement will be suspended;
- state each kind of export operations and each kind of prescribed goods and, if applicable, each place in relation to which the approved arrangement is to be suspended;
- specifying the reason for the suspension; and
- include any other information prescribed by the rules.

Enabling the rules to set out any other information that must be included in a voluntary request for suspension will provide the Secretary with the flexibility to ensure that all relevant information will be included in the application so that the Secretary can make an informed decision.

Subclause 169(5) will provide that the Secretary must, by written notice to the holder, suspend the whole or part of the approved arrangement if requested to do so by the holder of the approved arrangement with effect on the day specified in the notice.
Clause 170  Request to revoke suspension

Subclause 170(1) will provide that if an approved arrangement, or a part of an approved arrangement, is suspended under clause 169 of the Bill, the holder of the approved arrangement may request the Secretary to revoke the suspension.

Subclause 170(2) will provide that the request must be in writing, state the reason for the request and include any other information prescribed by the rules made under clause 432 of the Bill. Enabling the rules to set out what additional information must be included in a request to revoke a suspension of an approved arrangement will give the Secretary the flexibility to identify matters that may relate to particular arrangements, particular prescribed goods or particular markets.

Subclause 170(3) will provide that, if the Secretary receives a request under subclause 170(1), the Secretary may:

- revoke the suspension if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked;
- suspend the approved arrangement or part of the approved arrangement; or
- revoke the approved arrangement.

Paragraph 170(3)(b) will provide that if the Secretary does not revoke the suspension under paragraph 170(3)(a), the Secretary may suspend the approved arrangement under Division 2 of Part 5 of Chapter 5 of the Bill, or revoke the approved arrangement under Division 2 of Part 6 of Chapter 5 of the Bill.

Clause 170(3) means that if the holder of the arrangement requests the revocation of the suspension, the Secretary will only have three choices:

- to agree to revoke the suspension;
- to suspend the arrangement or part of the approved arrangement; or
- to revoke the approved arrangement.

In these circumstances, the decision to refuse to revoke the suspension itself will not be a reviewable decision. If the Secretary makes the first choice, there is no need to be able to review the decision as it is in the holder’s favour. If the Secretary makes the second or third choice, these decisions in themselves are reviewable.

A note will be included at the end of subclause 170(3) that will advise the reader that a decision to suspend or revoke the approved arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Division 2—Suspension by Secretary

Clause 171  Grounds for suspension—general

There are a number of grounds upon which the Secretary may suspend all or some of the matters covered by an approved arrangement. The ability to suspend an approved arrangement will be necessary in a range of circumstances to ensure that the approved arrangement remains effective to achieve the requirements of the Bill.
Subclause 171(1) will provide that the Secretary may suspend all or part of an approved arrangement if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by an approved arrangement cannot be ensured;
- if the holder of the approved arrangement is a kind of person who will be required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 5—the holder is not a fit and proper person;
- a requirement referred to in subclause 151(2) of the Bill is no longer met;
- export operations covered by the approved arrangement have not been, or are not being, carried out in accordance with the approved arrangement, or a condition of the approved arrangement has been, or is being contravened;
- circumstances relating to any of the export operations or goods covered by the approved arrangement have changed;
- carrying out the export operations in relation to a kind of goods under the approved arrangement will no longer ensure compliance with the requirements of the Bill or meet importing country requirements;
- the holder of the approved arrangement has failed to comply with a direction or a request made under the Bill, or has engaged in conduct that either intimidated a person, or hindered or prevented a person performing their functions or exercising powers under the Bill;
- the holder of the approved arrangement, or a person who manages or controls or carries out export operations covered by the approved arrangement has:
  - made a false, misleading or incomplete statement in an application under Chapter 5 of the Bill; or
  - given false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
  - given false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
- the holder of the approved arrangement has contravened a requirement of the Bill in relation to an approved arrangement; or
- a ground prescribed by the rules made for the purposes of clause 171 of the Bill exists.

Subparagraph 171(1)(h)(i) will provide that the Secretary may suspend the approved arrangement or part of an approved arrangement (with a written notice, see subclause 171(2)) when the holder of the arrangement fails to comply with a direction given by an authorised officer or the Secretary. Contravening a direction from an authorised officer or the Secretary will be a serious act. It potentially compromises export operations that are taking place under the approved arrangement and on this basis requires an appropriate regulatory response.

This provision will be important in ensuring that the effectiveness of the regulatory framework will be maintained by providing the Secretary with the ability to suspend export operations on the basis of a contravention of a direction by an authorised officer or the Secretary.

Subparagraph 171(1)(i)(i) will provide that the Secretary may suspend the approval of an arrangement if the Secretary reasonably believes that the holder intimidated a person performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the
person. Engaging in such conduct is a serious act. Such conduct may also amount to an
offence under 149.1 of the Criminal Code (obstruction of Commonwealth public officials).
Such conduct may also compromise export operations that are taking place in accordance
with an approved arrangement (and therefore the integrity of goods) and on this basis will
require an appropriate regulatory response.

The Secretary will be required to reasonably believe that the one or more grounds set out in
subclause 171(1) exists, before taking action under that subclause. This standard will require
the Secretary to base the Secretary’s own belief on objective circumstances but does not go so
far as to require that the ground be established on the balance of probabilities. The
requirement is, however, more than having a reasonable suspicion that the ground exists. This
threshold test will generally reflect the existing standard for suspending an approved
arrangement under existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe any additional grounds on
which the approved arrangement may be suspended will provide the Secretary with the
flexibility to address the wide range of matters that relate to an approved arrangement and
which might impact on the arrangement thereby necessitating the suspension of the
arrangement.

Two notes will be included at the end of subclause 171(1). Note 1 will refer the reader to
clause 174 of the Bill, which will provide that if export operations are suspended, the period
of suspension must not be greater than 12 months. Note 2 will advise the reader that a
decision to suspend the approved arrangement under clause 171 will be a reviewable decision,
and will refer the reader to Part 2 of Chapter 11 of the Bill.

Notice of proposed suspension

Subclause 171(2) will provide that the Secretary must not suspend an approved arrangement,
or part of an approved arrangement, under subclause 171(1) unless the Secretary has given a
written notice to the holder of the approved arrangement in accordance with subclause 171(3).

Subclause 171(3) will provide that the written notice must:

- specify whether the whole of the approved arrangement is proposed to be suspended,
or whether a part of the approved arrangement is proposed to be suspended and, if so,
  which part; and
- specify the grounds for the proposed suspension; and
- subject to subclause 171(4), request the holder of the approved arrangement to give
  the Secretary, within 14 days after the day the notice is given, a written statement
  showing cause why the approved arrangement, or the part of the approved
  arrangement, should not be suspended as proposed; and
- include a statement setting out the holder’s right to seek review of a decision to
  suspend the approved arrangement, or the part of the approved arrangement, as
  proposed.

Subclause 171(4) will provide that, if the Secretary reasonably believes that the grounds for
the suspension are serious and urgent, then the Secretary will not be required to include the
request in paragraph 171(3)(c) in the notice given under subclause 171(2). However, the
notice of proposed suspension must still be given. Subclause 171(4) does not limit the factors
the Secretary may take into account when determining if the grounds are serious or urgent.
This will be decided on a case-by-case basis. In addition to the notice of proposed suspension, the Secretary must give a notice of suspension in accordance with clause 173 of the Bill. A decision to suspend the approved arrangement will remain a reviewable decision.

**Clause 172  Grounds for suspension—overdue relevant Commonwealth liability**

Clause 172 will provide that an overdue liability to the Commonwealth will be grounds for suspending an approved arrangement. This clause is intended to ensure timely payment of liabilities that are due and to prevent further debts to the Commonwealth from being incurred.

**Notice of proposed suspension**

Subclause 172(1) will provide that the Secretary may suspend an approved arrangement if a relevant Commonwealth liability (which will be defined in clause 12 of the Bill) of the holder of the arrangement, is more than 30 days overdue. Subclause 172(1) will also provide that the Secretary may only suspend the approved arrangement if:

- the Secretary has given a written notice (in accordance with subclause 172(2)) to the holder of the approved arrangement (the debtor) who will be liable to pay the relevant Commonwealth liability; and
- within eight days after the notice is given, the relevant Commonwealth liability has not been paid or the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Unlike suspension under clause 171 of the Bill, the suspension of the approved arrangement under clause 172 will be a full suspension of the arrangement and cannot be in relation to only some of the matters covered by the approved arrangement. This will be necessary as the overdue Commonwealth liability impacts on the whole arrangement and not just parts thereof.

Three notes will be included at the end of subclause 172(1). Note 1 will refer the reader to clause 174 of the Bill, which will provide that a suspension must not be for more than 12 months. Note 2 will advise the reader that a decision to suspend an approved arrangement under clause 172 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will refer the reader to clause 180 of the Bill and clarify that if the Secretary suspends the approved arrangement under clause 172, the Secretary may revoke the approved arrangement in certain circumstances, including in relation to an overdue Commonwealth liability.

Subclause 172(2) will provide that a notice given under subclause 172(1) must:

- state that the relevant Commonwealth liability of the debtor in relation to an export licence is more than 30 days overdue;
- state that the Secretary may suspend the export licence in relation to all kinds of export operations and all kinds of prescribed goods if, within eight days after the notice is given:
  - the relevant Commonwealth liability is not paid; or
  - the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability;
- include a statement setting out the debtor’s right to seek a review of the decision to suspend the export licence.
Secretary may direct that activities not be carried out

Subclause 172(3) will provide that, if the Secretary suspends the approved arrangement under subclause 172(1), the Secretary may also refuse to carry out, or direct a person (for example, an authorised officer) not to carry out, specified activities or kinds of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid. This will have the effect of encouraging the debtor to pay the relevant Commonwealth liability so that they will be able to continue exporting goods.

A note will be included at the end of subclause 172(3) that will refer the reader to clause 309 of the Bill, which contains general provisions that relate to directions under the Bill.

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

Subclause 172(4) will provide that any action taken by the Secretary under clause 172 does not remove the liability of the debtor to pay the relevant Commonwealth liability. This will mean that, for example, if the Secretary suspends the approved arrangement under subclause 172(1) because the holder of the arrangement has an overdue relevant Commonwealth liability, the holder will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

Clause 173 Notice of suspension

Subclause 173(1) will provide that, if the Secretary decides to suspend an approved arrangement, or part of an approved arrangement, under either clause 171 or clause 172 of the Bill, the Secretary must give the holder of the approved arrangement a written notice of the suspension stating:

- that the notice must include that the approved arrangement, or the part of the approved arrangement is to be suspended;
- the reasons for the suspension;
- the date the suspension will start;
- the period of the suspension.

A note will be included after the end of subclause 173(1) that will clarify that the notice will also be required to state the matters referred to in clause 377 of the Bill.

Subclause 173(2) will provide that, if a notice (a show cause notice) was given under subclause 172(2) of the Bill that included the request referred to in paragraph 171(3)(c) of the Bill, the suspension must not start until the earlier of the day after any response by the holder is received or the end of the 14 day period after the show cause notice was given.

The effect of this is that the Secretary will be prevented from taking any action to suspend the approved arrangement during the 14 day period. If the holder of the arrangement does not respond within the 14 day period, the suspension will be able to be implemented. If the holder responds within the 14 day period, the Secretary will be required to consider the holder’s response when deciding whether to implement the suspension.
Clause 174   Period of suspension

Subclause 174(1) will provide that the suspension of the approved arrangement under Division 2 of Part 5 of Chapter 5 of the Bill must not be for more than 12 months. This will provide certainty to the holder of the approved arrangement about the period of the suspension and will prevent an approved arrangement from being suspended indefinitely. It is intended that the matters that necessitated the suspension will be required to be resolved in 12 months or less; otherwise, the Secretary will have the option of revoking the arrangement.

Subclause 174(2) will provide that the Secretary may vary the period of a suspension by written notice to the holder of the approved arrangement. However, subclause 174(2) will also provide that the total period of suspension must not be for more than 12 months.

A note will be included at the end of subclause 174(2) that will advise the reader that a decision to extend the period of a suspension will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

If the reason for the suspension warrants a longer period of suspension, the Secretary will be able to revoke the approved arrangement under Division 2 of Part 6 of Chapter 5 of the Bill instead, provided that the relevant provisions in the Bill are satisfied (see Division 2 of Part 6 of Chapter 5 of the Bill).

Clause 175   Revocation of suspension

A suspension of an approved arrangement need not remain in place for the entire period set out under paragraph 173(1)(d) of the Bill.

Clause 175 will provide that the Secretary may revoke a suspension made under Division 2 of Part 5 of Chapter 5 of the Bill by written notice to the holder of the approved arrangement. Revocation of a suspension may occur, for example, in circumstances where the Secretary is satisfied that the grounds for the suspension no longer exist or have been rectified.

Division 3—Other provisions

Clause 176   Effect of suspension

Clause 176 will provide that the effect of a suspension of an approved arrangement will be that the arrangement will remain in force and the requirements of the Bill in relation to that arrangement will continue to apply, unless the rules made under clause 432 of the Bill say otherwise. This will allow, for example, activities such as an audit to be undertaken while the suspension is in place for the purpose of determining compliance with requirements of the Bill. Clause 177 of the Bill will make it clear that carrying out export operations while suspended will be an offence.

Subclause 176(1) will provide that if the approved arrangement is suspended wholly or in part under Divisions 1 or 2 of Part 5 of Chapter 5 of the Bill, the approved arrangement will remain in force while it is suspended, and, subject to the rules made for the purposes of subclause 176(2), the requirements of the Bill in relation to the arrangement (including the conditions of the approved arrangement) must be complied with during the period of the suspension.
Subclause 176(2) will provide that the rules may prescribe requirements of the Bill (including conditions of the approved arrangement) that will not apply during the period of suspension. The effect of this will be that the default position is that all requirements of the Bill, such as the requirement to be audited or to comply with a direction of an authorised officer and conditions of the approved arrangement, will continue to apply unless the rules provide otherwise.

Enabling the rules made under clause 432 of the Bill to prescribe the requirements of the Bill or conditions of the arrangement that will not apply during the period of suspension will provide the Secretary with the flexibility to reduce the regulatory burden on the holder of an approved arrangement. These requirements are likely to vary depending on the kind of export operations, kind of prescribed goods and places to which goods may be exported.

**Clause 177  Export operations must not be carried out while approved arrangement suspended**

Clause 177 will provide that penalties may be imposed in circumstances where export operations are carried out while an approved arrangement is suspended.

Subclause 177(1) will provide that a holder of an approved arrangement will contravene subclause 177(1) if the holder was given a notice of suspension of the whole or a part of the approved arrangement under subclauses 169(5), or 173(1) of the Bill, and export operations in relation to which the approved arrangement was suspended were carried out under the approved arrangement while it was suspended.

A note will be included at the end of subclause 177(1) that will provide that the physical elements of an offence against subclause 177(2) of the Bill will be set out in subclause 177(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

The penalties for both the fault-based offence and the civil penalty provision in these clauses reflect the seriousness of conducting export operations while an approved arrangement is suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

Subclause 177(2) will provide that the holder of an approved arrangement will commit a fault-based offence if the holder contravenes subclause 177(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 177(1) will be 600 penalty units.

Subclause 177(3) will provide that the holder of an approved arrangement will be liable to a civil penalty if the holder contravenes subclause 177(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 177(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of
subclause 177(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 177(3) of 240 penalty units will be twice as high as the penalty available for the criminal offence. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 6—REVOCATION OF APPROVED ARRANGEMENT

Division 1— Revocation requested by holder

Clause 178  Holder may request revocation

Subclause 178(1) will provide that the holder of an approved arrangement may request the Secretary to revoke the arrangement. This can include an approved arrangement where a suspension is in effect under Part 5 of Chapter 5 of the Bill.

A note will be included at the end of subclause 178(1) that will clarify that, if the holder does not wish to revoke the approved arrangement for all purposes, the holder may apply to vary the approved arrangement under Subdivision B of Division 1 of Part 4 of the Bill. This will allow the holder of an approved arrangement to apply to vary aspects of the approved arrangement including the kinds of export operations, the kinds of prescribed goods and the places to which goods are to be exported.

Subclause 178(2) will require the request under subclause 178(1) to be in writing and include the information (if any) prescribed by the rules made under clause 432 of the Bill. This is intended to give the Secretary sufficient information of the nature of the revocation.

Subclause 178(3) will provide that if the Secretary receives a request under subclause 178(1), the Secretary must, by written notice to the holder of the approved arrangement, revoke the approved arrangement with effect on the day specified in the notice.

However, subclause 178(4) will provide that the Secretary does not have to revoke the approved arrangement if, before the holder of the approved arrangement made the request under clause 178(1), the Secretary had given the holder of the approved arrangement a notice under clause 179(2) of the Bill proposing to revoke the approved arrangement and the Secretary had not decided whether to revoke the approved arrangement.

In these circumstances, the Secretary will not be required to agree to revoke the approved arrangement. This is intended to ensure that the Secretary considers the matters as set out in subclause 179(1) of the Bill. Consideration of these matters may, for example, establish whether the holder has committed an offence or will be liable for a civil penalty for contravening a condition of the approved arrangement or determine the required action after the approved arrangement has been revoked (see clause 183 of the Bill).
Division 2—Revocation by Secretary

Clause 179  Grounds for revocation—general

There are a number of grounds upon which the Secretary will be able to revoke an approved arrangement (including an approved arrangement in relation to which a suspension is in effect under Part 5 of Chapter 5 of the Bill). These will be the same as the grounds for suspending an approved arrangement under subclause 171(1) of the Bill. The ability to revoke an approved arrangement may be necessary in a range of circumstances, including where the Secretary reasonably believes that the integrity of the prescribed goods cannot be ensured, that prescribed requirements will not be met, where conditions of the arrangement have been contravened, or in relation to certain conduct by the holder of the approved arrangement, such as failure to comply with a direction.

The revocation of an approved arrangement will be of the whole arrangement and cannot be in relation to only some of the matters covered by the arrangement. This reflects the likely seriousness of the circumstances necessitating the revocation by the Secretary, which cannot be dealt with by other means such as varying or suspending the approved arrangement.

There are a number of grounds upon which the Secretary may revoke an approved arrangement, including revoking an approved arrangement which is suspended under Part 5 of Chapter 5 of the Bill.

Subclause 179(1) will provide that the Secretary may revoke an approved arrangement if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by an approved arrangement cannot be ensured;
- if the holder is a kind of person who is required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 5—the holder is not a fit and proper person;
- a requirement referred to in subclause 151(2) of the Bill is no longer met;
- export operations covered by the approved arrangement have not been, or are not being, carried out in accordance with the approved arrangement, or a condition of the approved arrangement has been, or is being, contravened;
- circumstances relating to any of the export operations or goods covered by the approved arrangement have changed;
- carrying out the export operations in relation to a kind of goods under the approved arrangement will no longer ensure compliance with the requirements of the Bill or meet importing country requirements;
- the holder of the approved arrangement has failed to comply with a direction or a request made under the Bill or has engaged in conduct that either intimidated a person, or hindered or prevented a person performing their functions or exercising powers under the Bill;
- the holder of the approved arrangement, or a person who manages or controls or carries out export operations covered by the approved arrangement:
  - made a false, misleading or incomplete statement in an application under Chapter 5 of the Bill; or
  - gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
o gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
• the holder of the approved arrangement has contravened a requirement of the Bill in relation to an approved arrangement; or
• a ground prescribed by the rules made for the purposes of clause 171 of the Bill exists.

Subparagraph 179(1)(i)(i) will provide that the Secretary may revoke the approved arrangement if the Secretary reasonably believes that the holder intimidated a person performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person. Engaging in such conduct is a serious act. It may compromise export operations that are taking place in accordance with an approved arrangement (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.

The Secretary will be required to reasonably believe that the one or more grounds set out in subclause 179(1) exists, before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standard for revoking an approved arrangement under existing legislation.

Enabling the rules made under clause 432 of the Bill to prescribe any additional grounds on which the approved arrangement may be revoked will provide the Secretary with the flexibility to address the wide range of matters that relate to an approved arrangement that might impact on the arrangement, thereby necessitating the revocation of the arrangement. These grounds are likely to vary depending on the export operations, the prescribed goods and the places to which goods may be exported to which the approved arrangement may relate.

A note will be included at the end of subclause 179(1) that will advise the reader that a decision to suspend the approved arrangement under clause 179 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Notice of proposed revocation

Subclause 179(2) will provide that the Secretary must not revoke the approved arrangement under subclause 179(1) unless the Secretary has given a written notice to the holder of the approved arrangement in accordance with subclause 179(3).

Subclause 179(3) will provide that the written notice must:
• specify the grounds for the proposed revocation;
• subject to subclause 179(4), request the holder of the approved arrangement to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the arrangement should not be revoked; and
• include a statement setting out the holder’s right to seek review of a decision to revoke the approved arrangement.

Subclause 179(4) will provide that, if the Secretary reasonably believes that the grounds for the revocation are serious and urgent, then the Secretary will not be required to include the request in paragraph 179(3)(b) in the notice given under subclause 179(2). Subclause 179(4)
does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. However, the notice of proposed revocation must still be given. In addition to the notice of proposed revocation, the Secretary must give a notice of revocation in accordance with clause 181 of the Bill. A decision to revoke the approved arrangement will remain a reviewable decision.

Clause 180 Grounds for revocation—overdue relevant Commonwealth liability

Clause 180 will provide that an overdue liability to the Commonwealth will be grounds for the revocation of an approved arrangement. This clause is intended to ensure timely payment of liabilities which are due and to prevent further debts to the Commonwealth from being incurred.

Subclause 180(1) will provide that the Secretary may revoke an approved arrangement if the arrangement has been suspended under subclause 172(1) of the Bill for non-payment of a relevant Commonwealth liability and, within 90 days after the start of the suspension, the relevant Commonwealth liability has not been paid or the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

As with a revocation under clause 179 of the Bill, a revocation under clause 180 will be a full revocation of the approved arrangement and cannot be in relation to only some of the matters covered by the arrangement.

A note will be included at the end of subclause 180(1) to advise that a decision to revoke an approved arrangement under clause 180 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Secretary may direct that activities not be carried out

Subclause 180(2) will provide that, if the Secretary revokes an approved arrangement under subclause 180(1), the Secretary may also refuse to carry out, or direct a person (for example, an authorised officer) not to carry out, specified activities or kind of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid.

A note will be included at the end of subclause 180(2) that will refer the reader to clause 309 of the Bill, which sets out general provisions relating to directions under the Bill.

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

Subclause 180(3) will provide that any action taken by the Secretary under clause 180 does not affect the liability of the debtor to pay the relevant Commonwealth liability. This will mean that, for example, if the Secretary revokes the approved arrangement under clause 180 because the holder of the arrangement has an overdue relevant Commonwealth liability, the holder will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

Clause 181 Notice of revocation

Subclause 181(1) will provide that, if the Secretary revokes an approved arrangement under Division 2 of Part 6 of Chapter 5 of the Bill, the Secretary will be required to give the holder of the approved arrangement a written notice of the revocation. Subclause 181(1) will provide
that the notice must state that the approved arrangement will be revoked, the reasons for the revocation, and the date the revocation will take effect.

A note will be included at the end of subclause 181(1) that will provide that the notice must also state the matters referred to in clause 382 of the Bill.

Subclause 181(2) will provide that, if the holder of the approved arrangement was given a notice (a show cause notice) under subclause 179(2) of the Bill that included the request referred to in paragraph 179(3)(b) of the Bill, the revocation must not take effect before the earlier of:

- the day after any response by the holder was received;
- the end of the 14 day period after the show cause notice was given.

The effect of this is that the Secretary will be prevented from taking any action to revoke the approved arrangement during the 14 day period. For example, if the holder does not respond within the 14 day period, then the revocation may be implemented. If the holder responds within the 14 day period, the Secretary may consider the holder’s response when deciding whether to implement the revocation.

**Division 3—Other provisions**

**Clause 182 Export operations must not be carried out after approved arrangement revoked**

Clause 182 will provide that penalties may be imposed in circumstances where export operations are carried out while an approved arrangement is revoked.

Subclause 182(1) will provide that the holder of an approved arrangement will contravene subclause 182(1) if the holder was given a notice of revocation under subclauses 178(3) or 181(1) of the Bill, and export operations that were covered by the approved arrangement were carried out after the revocation took effect.

A note will be included at the end of subclause 182(1) that will provide that the physical elements of an offence against subclause 182(2) will be set out in subclause 182(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 182(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 182(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 182(1) will be 600 penalty units.

Subclause 182(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 182(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 182(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 182(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.
The civil penalty provided for in subclause 182(3) of 240 penalty units will be twice as high as the penalty available for the criminal offence. The penalty is intended to act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision in these clauses reflect the seriousness of conducting export operations after an approved arrangement is revoked. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 183 Secretary may require action to be taken after approved arrangement revoked**

Clause 183 will provide that penalties may be imposed in circumstances where a person contravenes a direction that required a person to take specified action after an approved arrangement was revoked.

Subclause 183(1) will provide that clause 183 will apply if a person was given a notice of revocation under subclauses 178(3) or 181(1) of the Bill (for example, if a notice has been given but the approved arrangement has not as yet been revoked) or the approved arrangement has been revoked under Division 1 or 2 of Part 6 of Chapter 5 of the Bill.

Subclause 183(2) will provide that the Secretary may direct, in writing, a person to take specified action, within a specified period, in relation to export operations and goods that were covered by the approved arrangement. The action must be an action that is necessary for the purpose of achieving one or more requirements of the Bill.

Subclause 183(3) will provide that a direction under subclause 183(2) must state that, if the person does not comply with the direction, the person may commit an offence or be liable to a civil penalty. Subclause 183(4) will provide that a person who is given a direction under subclause 183(2) must comply with that direction.

A note will be included at the end of subclause 183(3) to refer the reader to clause 309 of the Bill, which will set out the general provisions relating to directions under the Bill.

Subclause 183(4) will provide that a person who is given a direction under subclause 183(2) must comply with the direction.

Subclause 183(5) will provide that a person will commit a fault-based offence if the person engages in conduct that contravenes a direction given under subclause 184(2). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 183(4) will be 600 penalty units.
Subclause 183(6) will provide that a person will be liable to a civil penalty if the person contravenes subclause 183(4). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 183(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 183(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 183(6) of 240 penalty units will be twice as high as the penalty available for the criminal offence. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision in these clauses reflect the seriousness of failing to comply with a direction of the Secretary in relation to an approved arrangement after the arrangement has been revoked. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 7—OBLIGATIONS OF HOLDERS OF APPROVED ARRANGEMENT

Clause 184 Conditions of approved arrangement must not be contravened

Clause 184 will provide that penalties will be able to be imposed on the holder of an approved arrangement in circumstances where a condition of the approved arrangement has been contravened and either the approved arrangement is not suspended (subclauses 184(1) and 184(2)) or the approved arrangement is suspended (subclauses 184(5) and 184(6)).

Approved arrangement that is not suspended

Subclause 184(1) will provide that a person will contravene subclause 184(1) if:

- the person is the holder of an approved arrangement; and
- the arrangement is not suspended (wholly or in part) under Part 5 of Chapter 5 of the Bill; and
- a condition of the arrangement is contravened.

A note will be included at the end of subclause 184(1) that will provide that the physical elements of an offence against subclause 184(2) will be set out in subclause 184(1). The note will also refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 184(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 184(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both) for an individual. The
maximum fine for a body corporate for a contravention of subclause 184(1) will be 2,400 penalty units.

Subclause 184(3) will provide that strict liability will apply to the element of the offence in paragraph 184(1)(c) (that a condition of the approved arrangement is contravened). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 184(1)(c) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 184(1)(c) is a matter of law. It concerns the contravention of condition(s) of an approved arrangement. It is appropriate for the element to be strict liability because persons engaged as a holder of an approved arrangement should know their legal obligations before becoming an approved arrangement holder. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who hold an approved arrangement knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 184(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence under paragraphs 184(1)(a) (that the person is the holder of an approved arrangement) or 184(1)(b) (that the arrangement is not suspended (wholly or in part) under Part 5 of Chapter 5 of the Bill).

Subclause 184(4) will provide that a person will contravene subclause 184(1). The civil penalty provision will be subject to a penalty of 960 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 184(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 184(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 184(4) is twice as high as the penalty available for the criminal offences. The penalties are intended to act as a deterrent and recognise that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Approved arrangement that is suspended

Subclause 184(5) will provide that a person will contravene subclause 184(5) if:

- the person is the holder of an approved arrangement; and
- the approved arrangement, or a part of the approved arrangement is suspended under Part 5 of Chapter 5 of the Bill; and
- a condition of the approved arrangement is contravened; and
- the condition is required to be complied with during the period of suspension.

A note will be included at the end of subclause 184(5) that will provide that the physical elements of an offence against subclause 184(6) will be set out in subclause 184(5). The note will also refer the reader to clause 370 of the Bill which will provide further explanation of the operation of the physical elements of the offence.
Subclause 184(6) will provide that a person will commit a fault-based offence if the person contravenes subclause 184(5). The fault-based offence will be subject to a penalty of imprisonment for eight years or a fine of 480 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 184(5) will be 2,400 penalty units.

Subclause 184(7) will provide that strict liability will apply to the elements of the offence in paragraph 184(5)(c) (that a condition of the approved arrangement is contravened) and 184(5)(d) (that the condition is required to be complied with during the period of suspension). The effect of this is that the prosecution will only be required to prove the physical elements in paragraph 184(5)(c) and 184(5)(d) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraph 184(5)(c) and 184(5)(d) are matters of law. It concerns the contravention of condition(s) of an approved arrangement and that these condition(s) are required to be complied with during the period of the suspension. It is appropriate for the element to be strict liability because persons engaged as a holder of an approved arrangement should know their legal obligations before becoming an approved arrangement holder and should be aware of their obligations through the period of a suspension of an approved arrangement. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who hold an approved arrangement knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 184(5)(c) and 184(5)(d) will not affect the need for the prosecution to prove fault elements for other parts of the offence under paragraphs 184(5)(a) (that the person is the holder of an approved arrangement) or 184(5)(b) (that the arrangement is not suspended (wholly or in part) under Part 5 of Chapter 5 of the Bill).

Subclause 184(8) will provide that a person will be liable to a civil penalty if the person contravenes subclause 184(5). The civil penalty provision will be subject to a penalty of 960 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 184(5). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 184(5) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalties provided for in subclauses 184(4) and 184(8) of 240 penalty units are twice as high as the penalties available for the criminal offences. The penalties are intended to act as a deterrent, particularly for corporations, and recognise that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offences and the civil penalty provisions in these clauses reflect the seriousness of failing to comply with the conditions of an approved arrangement, irrespective of whether the approved arrangement is or is not suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods. The Secretary will have the ability to choose the most appropriate
enforcement action based on the circumstances, which will ensure that enforcement action
will be commensurate to the contravening conduct and the corresponding consequences of
that contravention.

Clause 185 Additional or corrected information in relation to application to
approve proposed arrangement etc.

Clause 185 will set out the circumstances in which the holder of an approved arrangement
must provide the Secretary with additional or corrected information in relation to an
application to approve a proposed arrangement.

Subclause 185(1) will require the holder of an approved arrangement to give the Secretary
additional or corrected information in accordance with subclause 185(2) if:

- the holder becomes aware that information included in an application made by the
  holder under Chapter 5 of the Bill, or information or a document given to the
  Secretary in relation to such an application, was incomplete or incorrect; or
- a change prescribed by the rules made under clause 432 of the Bill occurs.

Enabling the rules made under clause 432 of the Bill to prescribe circumstances that will
necessitate the holder of an approved arrangement to provide additional or corrected
information will provide the Secretary with the flexibility to accommodate the range of
changes in relation to the arrangement. This will enable a proactive response by the Secretary
to changes that will necessitate the holder of an approved arrangement giving additional or
corrected information to the Secretary.

However, subclause 185(2) will only create an obligation on the holder of the arrangement to
give the Secretary the additional or corrected information required under subclause 185(1) to
the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to a matter covered by the approved
  arrangement have been, are being, or will be complied with; or
- the importing country requirements in relation to a matter covered by the approved
  arrangement have been, are being, or will be met.

Subclause 185(2) will also require the occupier to give the Secretary the additional or
corrected information as soon as practicable. Whether the information is provided ‘as soon as
practicable’ will be determined on a case-by-case basis. Additional or corrected information
that will not be relevant to that assessment will not need to be provided to the Secretary.

It is necessary for the Secretary to have the most up-to-date information to determine whether
anything needs to be done in relation to the approved arrangement. It may be that an
arrangement was approved in circumstances where, had the Secretary had the correct
information, the arrangement may not have been approved. Enabling rules to prescribe a
change (or changes) where the holder of an approved arrangement is required to give the
Secretary additional or corrected information will provide the Secretary with the flexibility to
determine additional matters which are of importance that are not otherwise covered by
paragraph 185(1)(a). The ability to prescribe these changes also reflects the likelihood that
they will need to change from time to time and will need to commence at short notice.

Three notes will be included at the end of subclause 185(2). Note 1 will provide that a person
may commit an offence or be liable to a civil penalty if the person makes a false or misleading
statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill. The sections and specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents, and to minimise the risk of an arrangement being approved where it should not be.

Note 2 will refer the reader to paragraphs 171(1)(k) and 179(1)(k) of the Bill. The note will advise the reader that the Secretary may suspend or revoke the approved arrangement if the holder of the arrangement fails to comply with subclause 185(2). It is intended that the Secretary could suspend or revoke the approved arrangement under paragraphs 171(1)(k) and 179(1)(k) of the Bill, in addition to any civil penalty imposed under subclause 185(3).

Note 3 will provide that clause 185 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to an application for an approved arrangement and if necessary, can take immediate action. Clause 426 of the Bill will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 185(3) will provide that a person will be liable to a civil penalty if the person is required to give the Secretary information under subclause 185(2) and they fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 185. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 185 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to the holder not providing correct or updated information. It will be necessary for the Secretary to have relevant and correct information to determine whether an approved arrangement should be granted. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

**Clause 186 Notice of changes to holder of approved arrangement**

Subclause 186(1) will require the holder of an approved arrangement to notify the Secretary in writing as soon as practicable after any of the following events occurs:

- there is a change in the holder’s business structure;
- if the holder is an individual—the individual enters into a personal insolvency agreement under Part X of the Bankruptcy Act;
• if the holder is a corporation—the corporation enters into administration (within the meaning of the section 435C of the Corporations Act) or is to be wound up;
• there is a change in the trading name, business address or contact details of the holder;
• any other event prescribed by the rules.

It is necessary for the Secretary to be notified of changes to the holder so the Secretary can determine whether the ongoing approval of an arrangement is appropriate. The provision of information may lead the Secretary to take certain action, such as suspension or revocation of an arrangement.

Enabling the rules made under clause 432 of the Bill to prescribe other events for which the holder will be required to notify the Secretary will give the Secretary the flexibility to respond to changes that may impact on the suitability of the holder of the approved arrangement to carry out export operations that are not otherwise covered by subclause 186(1). The ability to prescribe these changes also reflects the likelihood that they may be specific to a kind of prescribed goods, export operations, or places of export, and will need to change from time to time and will need to commence at short notice.

An example will be included at the end of subclause 186(1), which will clarify that a change in the holder’s business structure for the purpose of paragraph 186(1)(a) will include:

• a change in a person who participates in the management or control of the holder’s export business;
• if the holder is a partnership—a change in the membership of the partnership.

A note will be included at the end of subclause 186(1) that will provide that the Secretary may suspend or revoke the approved arrangement if:

• the holder of the approved arrangement is not a fit and proper person (see paragraphs 171(1)(b) and 179(1)(b) of the Bill); or
• the holder fails to comply with clause 186 (see paragraphs 171(1)(k) and 179(1)(k) of the Bill).

Subclause 186(2) will provide that a person will be liable to a civil penalty if they are required to notify the Secretary of an event or circumstance under subclause 186(1) and fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 186. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 186 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to the holder of an arrangement for not notifying the Secretary of the changes. It will be necessary for the Secretary to be aware of events or changes to determine whether any action needs to be taken in relation to the approved arrangement. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
Clause 187  Notification of conviction of serious offence

Subclause 187(1) will provide that clause 187 will apply to the following persons:

- an applicant for approval of a proposed arrangement under clause 150 of the Bill, and any other person who is to manage or control or carry out export operations in accordance with the proposed arrangement;
- the holder of an approved arrangement, and any other person who manages or controls or carries out export operations covered by the approved arrangement;

if the person is not a kind of person who will be required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 5.

Subclause 187(2) will provide that if a person to whom clause 187 applies is convicted of an offence against, or ordered to pay a penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Secretary, in writing, of the conviction or order as soon as practicable after the person is convicted or the order is made.

Two notes will be included at the end of subclause 187(2). Note 1 will advise the reader that if a person referred to in subclause 187(1) is a kind of person who is required by rules made for the purposes of clause 373 to be a fit and proper person for the purposes of Chapter 5 of the Bill, the person is required to notify the Secretary of certain matters under subclause 374(5) of the Bill. Note 2 will provide that the Secretary may suspend or revoke the approved arrangement under paragraphs 171(1)(k) or 179(1)(k) of the Bill if clause 187 applies to the holder of an approved arrangement and the holder fails to comply with subclause 187(2).

Subclause 187(3) will provide that a person will be liable to a civil penalty if they are required to notify the Secretary of a conviction or order under subclause 187(2) and they fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 187. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 187 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to conduct that will be inconsistent with the requirements of this clause. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

Clause 188  Notice of person ceasing to operate business etc. covered by approved arrangement

Clause 188 will deal with the requirement to notify the Secretary in circumstances where a person ceases to operate a business covered by an approved arrangement and will set a penalty for failing to do so.
Subclause 188(1) will provide that if a person (the *former holder*) who was the holder of an approved arrangement ceases to operate the business that carries out the export operations under the approved arrangement or ceases to manage or control export operations covered by the approved arrangement, the former holder must, as soon as practicable after ceasing to do these activities, notify the Secretary in writing of that fact. Subclause 188(1) will also provide that the notice must also include contact details for the former holder.

Subclause 188(2) will provide if a former holder ceases to operate the business or manage or control export operations, the approved arrangement will be taken to have been revoked at the earlier of:

- the end of the day a notice under subclause 188(1) advising of the cessation is received by the Secretary; or
- the end of the seventh day after the day the former holder ceased to operate the business or manage or control export operations carried out under the approved arrangement.

The reason for the automatic revocation of the approved arrangement in circumstances where the former holder ceases to operate the business or manage or control export operations carried out under the approved arrangement is that the arrangement is assessed on the basis of the person who applied for the approved arrangement. If another person wants to take over as the holder of the approved arrangement, they will have to make a new application for the approval of the arrangement (see Part 2 of Chapter 5 of the Bill).

Subclause 188(3) will provide that a person will be liable to a civil penalty if they are required to notify the Secretary under subclause 188(1) and they fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 188. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 188 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to a former manager for not notifying the Secretary of the changes. It will be necessary for the Secretary to be aware of a change in the holder of an approved arrangement so that the arrangement may be revoked until a new application is made. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

Chapter 6—Export licences

PART 1—INTRODUCTION

Clause 189     Simplicity outline of this Chapter

Clause 189 will provide a simplified outline of Chapter 6 of the Bill. Chapter 6 of the Bill will provide for matters in relation to applications for export licences, conditions of the licence, renewal, suspension and obligations of the holder of the licence. Export licences are one of the regulatory controls provided for in the Bill that will allow people in the export system to
take responsibility for meeting requirements while enabling the Secretary to have regulatory oversight of their export operations and activities. Provisions in Chapter 6 will also enable the rules made under clause 432 of the Bill to prescribe requirements that will apply before an export licence will be granted and conditions in relation to certain matters covered by the licence.

The simplified outline is included to assist the reader to understand the substantive clauses of Chapter 6; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which this outline relates.

**PART 2—GRANT OF EXPORT LICENCE**

**Clause 190 Application for export licence**

Subclause 190(1) will enable a person to apply to the Secretary for an export licence to carry out a kind of export operations in relation to a kind of prescribed goods.

Paragraph 190(2)(a) will provide that the application may cover more than one kind of export operations and more than one kind of prescribed goods.

Paragraph 190(2)(b) will provide that the export licence may, but is not required to, specify one or more places to which the goods may be exported. This will enable the particular market to be included in the application for the export licence, but this will not be mandatory.

Two notes will be included at the end of subclause 190(2). Note 1 will advise that the export of a kind of prescribed goods may be prohibited unless the exporter holds an export licence that covers the export of goods of that kind. Note 1 will also refer the reader to clause 29 of the Bill and rules made under clause 432 of the Bill for the purposes of clause 29. Note 2 will refer the reader to clause 377 of the Bill, which will set out the requirements for applications for an export licence.

**Clause 191 Secretary must decide whether to grant export licence**

Subclause 191(1) will provide that, on receiving an application under clause 190 of the Bill for an export licence, the Secretary must decide to grant the export licence or refuse to grant the export licence.

Four notes will be included at the end of subclause 191(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to applications for export licences.

Note 2 will clarify that, if the application is to carry out more than one kind of export operations in relation to more than one kind of prescribed goods for export to one or more places, the Secretary may decide to grant the applicant an export licence to carry out some or all of those kinds of export operations, in relation to one or more of those kinds of goods, for export to one or more of those places.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that, if the Secretary does not make a decision within the consideration period (which will be prescribed by the rules), the Secretary is taken to have refused the application at the end of that period. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.
Note 4 will advise the reader that a decision to refuse to grant an export licence will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 191(2) will provide that the Secretary may grant an export licence if satisfied that, having regard to any matter the Secretary considers relevant, the following requirements are met:

- if the applicant is a kind of person who is required by the rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 6 of the Bill—the applicant is a fit and proper person;
- all relevant Commonwealth liabilities of the applicant have been paid, or, if they have not been paid or are not taken to have been paid, the non-payment is due to exceptional circumstances;
- the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if granted, would be subject;
- any other requirements prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before an export licence will be issued will provide the Secretary with the flexibility to determine what other requirements may be necessary and appropriate for the applicant for an export licence to meet. This may, for example, be on a commodity or market-specific basis.

A note will be included at the end of subclause 191(2), which will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to have been paid in certain circumstances.

Subclause 191(3) will enable the Secretary to set an expiry date for an export licence if relevant. Two notes will be included at the end of subclause 191(3). Note 1 will refer the reader to subclause 194(1) of the Bill. The note will provide that if there is no expiry date, the export licence remains in force unless it is revoked. Note 2 will advise the reader that a decision to set an expiry date for an export licence will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 191(4) will enable the Secretary to set an expiry date for the export licence under subclause 191(3) even if rules made for the purposes of subclause 194(5) apply in relation to the export licence. For example, rules made for the purposes of subclause 194(5) may provide an expiry date for export licences, as ten years from the date the licence was granted. This would not prevent the Secretary from setting a different expiry date for that export licence under subclause 191(4), for example five years from the date the licence was granted, if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for a specific export licence, even if rules are made setting an expiry date for export licence.
Clause 192  Conditions of export licence

Subclause 192(1) will provide that, if the Secretary grants an export licence in relation to a kind of export operations in relation to a kind of prescribed goods, the export licence will be subject to:

- conditions that are provided by the Bill; and
- conditions that are prescribed by the rules made under clause 432 of the Bill (other than those conditions which the Secretary decides are not to apply to the licence). The conditions that are not to apply to a particular licence must be set out in the notice of decision given to the applicant under clause 193 of the Bill; and
- any additional conditions that the Secretary considers are appropriate for the export licence under consideration. These additional conditions must be set out in the notice of decision given to the applicant under clause 193 of the Bill.

Five notes will be included at the end of subclause 192(1). Note 1 will refer the reader to subclause 222(4) of the Bill, which will provide that an export licence is subject to the condition that the holder of the licence must comply with any directions given from time to time to the holder under clause 222 of the Bill.

Note 2 will refer the reader to clause 217 of the Bill, which will provide that the holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the export licence is contravened.

Note 3 will refer the reader to clauses 205 and 212 of the Bill, which will provide that the export licence may be suspended or revoked if a condition of the licence is contravened.

Note 4 will advise the reader that a decision to grant an export licence subject to additional conditions will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Note 5 will refer the reader to Part 7 of Chapter 6 of the Bill, which will set out additional obligations for the holder of an export licence.

Subclause 192(2) will provide examples of what may be covered by the rules made under clause 432 of the Bill for the purpose of paragraph 192(1)(b). These conditions may, for example, relate to:

- the holder of an export licence;
- a kind of export operations;
- a kind of prescribed goods;
- importing country requirements relating to a kind of export operations or a kind of prescribed goods.

Enabling the rules made under clause 432 of the Bill to prescribe conditions that must be met will provide the Secretary with the flexibility to determine the conditions that are necessary and appropriate for a certain type of export licence being considered. This may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers are appropriate for the export licence under consideration will give the Secretary the flexibility to determine additional conditions relevant to a particular application, on a case-by-case basis.
Imposing additional conditions may also be necessary to ensure that the export licence will be suitable for the export operations it will cover and that it will meet the requirements of the Bill.

Subclause 192(4) will provide that, for the purposes of the Bill, conditions to which the export licence is subject under subclause 192(1) or clause 197 of the Bill (conditions of renewed export licence) are conditions of the export licence. Contravention of the conditions of an export licence may be grounds for suspending an export licence under paragraph 205(1)(d) of the Bill, or revoking the export licence under paragraph 212(1)(d) of the Bill.

Clause 193  Matters to be stated in export licence

Subclause 193(1) will provide that, if the Secretary grants an export licence, the Secretary must give the applicant a written notice that sets out the information specified in subclause 193(2). This will include:

- the number allocated to the licence;
- each kind of export operations and each kind of prescribed goods covered by the licence;
- if applicable, each place to which the goods are to be exported;
- the date the licence takes effect;
- that the licence remains in force indefinitely or the expiry date for the licence;
- any conditions that are prescribed by the rules that are not conditions of the licence;
- and any other information prescribed by the rules.

Enabling rules made under clause 432 of the Bill to prescribe any additional matters that will need to be stated in the notice will provide the Secretary with the flexibility to ensure that the applicant and holder of the licence are provided with all relevant information in relation to the licence. This may be relevant to, for example, a particular commodity or market.

Providing a written notice under clause 193 will inform the applicant of the Secretary’s decision as well as the terms under which the export licence is granted. The notice will not set out all conditions or requirements that are applicable to the export licence. However, the notice will identify any conditions in the rules that will not apply, as well any conditions of the licence that will be applicable to the application and that will not be specified in the rules. Providing this information will enable the applicant to readily identify the conditions of the export licence that must be complied with.

Clause 194  Period of effect of export licence

Clause 194 will provide certainty to the holder of an export licence about the period of effect of the licence and the circumstances, such as a revocation or renewal, which may change this period.

Export licences that have no expiry date

Subclause 194(1) will provide that if there is no expiry date set for the export licence, the licence will remain in force unless it is revoked under Part 6 of Chapter 6 of the Bill.

Export licences that have an expiry date
Subclause 194(2) will provide that, if there is an expiry date for an export licence, the licence will remain in force until the end of that expiry date unless the licence is renewed under Part 3 of Chapter 6 of the Bill, or revoked under Part 6 of Chapter 6 of the Bill, on or before that date.

Subclause 194(3) will provide that there is an expiry date for an export licence if rules made for the purposes of subclause 194(5) apply in relation to the export licence or an expiry date for the export licence set under subclauses 191(3) or 196(3) or paragraphs 201(1)(c) or (d) of the Bill is in force in relation to the export licence.

Subclause 194(4) will provide the expiry date for an export licence is either:

- the last date of the period prescribed by the rules, if rules made for the purposes of subclause 194(5) apply in relation to the export licence and no expiry date set under subclause 191(3) or 196(3) or paragraphs 201(1)(c) or (d) is in force in relation to the export licence; or

- the expiry date set under subclause 191(3) or 196(3) or paragraph 201(1)(c) or (d) is in force in relation to the export licence.

Rules may prescribed period of effect of export licence

Subclause 194(5) will provide that the rules may prescribe the period during which the export licence remains in force. The rules may apply in relation to export licences generally or export licences for a kind of export operations in relation to a kind of prescribed goods and, if applicable, a place to which the goods may be exported.

PART 3—RENEWAL OF EXPORT LICENCE

Clause 195 Application to renew export licence

Subclause 195(1) will be an application provision that will provide that clause 196 will apply in relation to an export licence, including one that has been suspended, if there is an expiry date for the licence.

A note will be included at the end of subclause 195(1) that will refer the reader to subclauses 194(3) or 194(4) in relation to the expiry date for an export licence.

Subclause 195(2) will provide that the holder of an export licence may apply to the Secretary to renew the licence. Subclause 195(3) will provide that such an application may relate to more than one kind of export operations, more than one type of prescribed goods and may, but is not required to, specify one or more places to which the goods will be exported.

Subclause 195(4) will provide that the application for renewal must be made within the period prescribed by the rules made under clause 432 of the Bill or any longer period allowed by the Secretary. Enabling the Secretary to prescribe this period in rules made under clause 432 of the Bill will allow the Secretary to set an appropriate period for the consideration of the application.

Subclause 195(5) will provide that if the application for renewal is made after the relevant period under subclause 195(4), then it will be taken to be a new application for the grant of an export licence and the provisions in Part 2 of Chapter 6 of the Bill (which relate to new
applications for export licences) will apply in relation to the application. The other provisions in Part 3 of Chapter 6 of the Bill (which relate to applications for renewal of export licences) will not apply.

**Clause 196 Secretary must decide whether to renew export licence**

Subclause 196(1) will provide that, if the Secretary receives an application to renew an export licence under clause 195 of the Bill, the Secretary must decide either to renew, or to refuse to renew, the licence.

Four notes will be included at the end of subclause 196(1). Note 1 will refer the reader to clause 379 of the Bill, which will provide for matters relating to dealing with applications to renew an export licence, including the Secretary’s powers in dealing with applications and the time within which a decision must be made.

Note 2 will clarify that, if an application is made to renew an export licence to carry out more than one kind of export operations in relation to one or more kinds of prescribed goods to more than one place, the Secretary may renew the licence to carry out some or all of those export operations in relation to some or all of those kinds of goods for export to some or all of those places. This is intended to make it clear that the Secretary will have the discretion to renew an export licence for any combination of export operations, prescribed goods or places of export.

Note 3 will refer the reader to subclause 379(2) of the Bill, which will provide that if the Secretary does not make a decision within the consideration period, the Secretary will be taken to have refused the application at the end of that period. Subclause 379(3) of the Bill will provide that the consideration period will be prescribed by the rules made under clause 432 of the Bill. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.

Note 4 will advise the reader that a decision to refuse to renew an export licence will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11. Note 4 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 196(2) will provide that the Secretary may refuse to renew the export licence if the Secretary is not satisfied, having regard to any matter the Secretary considers relevant, of one or more of the following:

- if the holder of the licence is a kind of person who is required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 6 the holder is a fit and proper person;
- all relevant Commonwealth liabilities of the holder have been paid, or if they have not been paid or are not taken to have been paid, the non-payment is due to exceptional circumstances;
- the holder of the licence has complied with the requirements of the Bill in relation to the export operations and prescribed goods covered by the export licence;
- the conditions of the licence have been, and are being, complied with;
- any other requirement prescribed by the rules will be met.

Enabling the rules made under clause 432 of the Bill to prescribe other requirements that must be met before an export licence will be renewed will provide the Secretary with the flexibility
to ensure that it is appropriate in all circumstances to renew the licence and that there are no reasons to refuse the renewal. Such grounds may also be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that requirements may need to change from time to time.

Unlike approving an initial application for an export licence, which will require the Secretary to be satisfied that all requirements set out in subclause 190(2) of the Bill have been met, subclause 196(2) will only require the Secretary to consider whether there is evidence of non-compliance and hence grounds for refusing the request to renew. This approach will ensure that export licences will only be renewed in circumstances where there is a history of compliance by the holder of the licence; the requirements and conditions of the export licence have been complied with; and there are no outstanding financial liabilities.

A note will be included at the end of subclause 196(2), which will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to have been paid in certain circumstances.

If the Secretary renews the export licence, subclause 196(3) will enable the Secretary to set an expiry date for the licence if the Secretary considers that this is appropriate. Two notes will be included at the end of subclause 196(3). Note 1 will advise the reader that if there is no expiry date for the export licence, the licence will remain in force unless it is revoked in accordance with subclause 194(1) of the Bill. Note 2 will advise the reader that a decision to set an expiry date for the renewed licence will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 196(4) will enable the Secretary to set an expiry date for the renewed export licence under subclause 196(3) even if rules made for the purposes of subclause 194(5) apply in relation to the export licence. For example, rules made for the purposes of subclause 194(5) may provide an expiry date for export licences, as ten years from the date the licence was granted. This would not prevent the Secretary from setting a different expiry date for that export licence under subclause 196(4), for example five years from the date the licence was granted, if the Secretary considers that expiry date appropriate in the circumstances. This decision will be reviewable (Part 2 of Chapter 11 of the Bill). These clauses operate together to enable the Secretary to exercise discretion about an appropriate expiry date for a specific export licence, even if rules are made setting an expiry date for export licence.

Clause 197 Conditions of renewed export licence

As with the initial grant of an export licence (see clause 191 of the Bill), clause 197 will provide that, if the Secretary renews the export licence, the licence will be subject to:

- the conditions that will be provided by the Bill; and
- the conditions that will be prescribed by the rules made under clause 432 of the Bill (other than those conditions which the Secretary decides are not to apply to the licence). The conditions that are not to apply to a particular renewal must be set out in the notice of decision given to the applicant under clause 198 of the Bill; and
- any additional conditions that the Secretary considers are appropriate and that are specified in the licence.

These additional conditions will be required to be set out in the new export licence that must be given to the applicant under clause 198 of the Bill.
Enabling the rules made under clause 432 of the Bill to prescribe the conditions that must be met will provide the Secretary with the flexibility to determine the conditions that are necessary and appropriate for the certain type of export licence that is subject to an application for renewal. This may be relevant to, for example, a particular commodity or market.

Enabling the Secretary to impose any additional conditions that the Secretary considers are appropriate for the export licence under consideration will give the Secretary flexibility to determine additional conditions on a case-by-case basis. Imposing any additional conditions will also be necessary to ensure that the export licence will be suitable for the export operations it will cover and that it will continue to meet the requirements of the Bill.

Five notes will be included at the end of subclause 197(1). Note 1 will refer the reader to subclause 222(4) of the Bill, which will provide that an export licence is subject to the condition that the holder of the licence must comply with any directions given from time to time to the holder under clause 222 of the Bill. Note 2 will refer the reader to clause 217 of the Bill, which will provide that the holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened. Note 3 will refer the reader to clauses 205 and 212 of the Bill, which will provide that the export licence may be suspended or revoked if a condition of the licence is contravened. Note 4 will advise the reader that a decision to renew an export licence will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 5 will refer the reader to Part 7 of Chapter 6 of the Bill, which will set out additional obligations on the holder of an export licence.

Clause 198 Matters to be stated in renewed export licence

Clause 198 will provide that if an export licence is renewed, the Secretary will be required to give the applicant a new export licence that states the information referred to in subclause 193(2) of the Bill. This will ensure that the holder of the licence is aware of all matters in relation to, including any conditions that may be imposed on, the renewed licence.

PART 4—VARIATION OF EXPORT LICENCE

Division 1—Application by holder

Clause 199 Application by holder for variation of export licence

Clause 199 will allow the holder of an export licence to apply to the Secretary to vary the export licence. This will enable the Secretary to respond to the changing needs and requirements of the holder and allow a flexible approach to the regulation of export licences.

Subclause 199(1) will provide that the holder of an export licence may apply to the Secretary to vary:

- the licence in relation to certain matters including by adding or removing any matters that relate to the kinds of export operations, the kinds of prescribed goods covered by the licence or, if applicable, places to which the goods may be exported;
- the conditions of the licence;
- to make minor changes to a matter stated in the licence (including to correct a minor or technical error); or
to vary any other aspect of the licence. An example will be included at the end of subclause 199(1) to assist the reader in relation to what kind of matters may fall within ‘any other aspect of the licence’. The example will note that a variation may be needed to change the name of a person who participates, or will participate, in the management or control of the holder’s export business.

A note will be included at the end of subclause 199(1) that will refer the reader to clause 377 of the Bill, which will set out the general requirements for applications under the Bill, including applications for variation of an export licence.

Subclause 199(2) will provide that, on receiving an application, the Secretary must decide either to make the variation or to refuse to make the variation.

Three notes will be included at the end of subclause 199(2). Note 1 will refer the reader to clause 379 of the Bill, which sets out what the Secretary may do in dealing with applications and the time within which a decision must be made.

Note 2 will refer the reader to subclause 379(2) of the Bill, which will provide that, if the Secretary does not make a decision within the consideration period, the Secretary will be taken to have refused the application at the end of that period. Subclause 379(3) of the Bill will provide that the consideration period will be prescribed by the rules made under clause 432 of the Bill. Prescribing this period in the rules will allow the Secretary to set an appropriate period for the consideration of the application.

Note 3 will advise the reader that a decision to refuse to make the variation will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will also refer the reader to clause 382 of the Bill, which will provide that the Secretary must give the applicant written notice of the decision.

Subclause 199(3) will provide that the Secretary may make the variation if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, of one or more of the following:

- all relevant Commonwealth liabilities of the applicant have been paid, or, if they have not been paid or are not taken to have been paid, the non-payment is due to exceptional circumstances;
- the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if varied, would be subject;
- any other requirement prescribed by the rules is met.

Enabling the rules made under clause 432 of the Bill to prescribe any other requirements that must be met before an export licence is varied may be necessary and appropriate for the type of variation under consideration and will provide the Secretary with the flexibility to specify matters that may be relevant to, for example, changes in a particular commodity or market.

A note will be included at the end of subclause 199(3) that will refer the reader to clause 431 of the Bill, which will provide that a relevant Commonwealth liability of a person will be taken to have been paid in certain circumstances.
Clause 200  Notice of variation

Subclause 200(1) will provide that if the Secretary approves a variation of an export licence under paragraph 199(2)(a) of the Bill, the Secretary must give the holder of the licence written notice of the variation.

Subclause 200(2) will provide that the notice must include the following information:

- details of the variation;
- the varied conditions of the export licence;
- the date the variation takes effect; and
- any other information prescribed by the rules for the purposes of clause 200.

The purpose of a notice under this clause is to inform the holder of the export licence of the Secretary’s decision to approve the variation, as well as the terms under which the variation is given.

Enabling the rules made under clause 432 of the Bill to prescribe other information that will need to be set out in the notice of variation will provide the Secretary with the flexibility to ensure that the holder of the licence will receive all relevant information in relation to the variation.

Subclause 200(3) will provide that if the export licence needs to be changed because there has been a variation, the Secretary will have seven days after making the variation to provide the holder of the export licence with a new export licence that includes the variation.

A note will be included at the end of subclause 200(3) that will clarify that an export licence, as varied, remains in force as provided by clause 194 of the Bill.

Division 2—Variation by Secretary

Clause 201  Secretary may make variations in relation to export licence

Clause 201 will enable the Secretary to vary an export licence on the Secretary’s own initiative, that is, without having received an application to vary the export licence by the holder under clause 199 of the Bill. This will be an important safeguard if, for example, a matter is brought to the attention of the Secretary that will affect the licence and needs to be brought to the attention of the holder of the export licence.

Subclause 201(1) will provide that the Secretary may do any of the following in relation to the export licence:

- vary any aspect of the licence, including so that it does not cover a kind of export operations or a kind of prescribed goods or a place to which goods may be exported (if applicable);
- vary the conditions of the licence (including by imposing new conditions);
- if there is no expiry date for the licence — set an expiry date;
- if there is an expiry date for the licence:
  - vary the expiry date; or
  - vary the licence by revoking the expiry date.
Two notes will be included at the end of subclause 201(1). Note 1 will provide that if the Secretary revokes the expiry date for the export licence under paragraph 201(1)(e), the licence will remain in force for the period prescribed by the rules, if rules made for the purposes of subclause 194(5) apply or indefinitely (unless revoked) if no such rules exist. Note 2 will advise the reader that certain decisions under subclause 201(1) will be reviewable, and will refer the reader to Part 2 of Chapter 11.

Clause 381 of the Bill will provide that only decisions made under paragraphs 201(1)(a) (varying an aspect of the export licence), 201(1)(b) (varying or adding new conditions), 201(1)(c) (setting an expiry date) and 201(1)(d) (setting an earlier expiry date) are reviewable decisions. These decisions will be reviewable as they may impact on the interests of the holder of an export licence. A decision made under paragraph 201(1)(e) will not be a reviewable decision as it will benefit the holder of an export licence.

Subclause 201(2) will provide that the Secretary may only:

- make a variation to any aspect of the export licence; or
- vary the conditions of the export licence; or
- if there is no expiry date for an export licence—vary the licence by setting an expiry date; or
- if there is an expiry date for the licence—vary the licence by setting a different expiry date;

if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by the licence cannot be ensured; or
- it is necessary to do so to ensure compliance with the requirements of the Bill in relation to the export operations and goods covered by the licence, or that importing country requirements covered by the licence are met; or
- if the holder is a kind of person who is required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 6 — the holder is not a fit and proper person; or
- a condition of the licence has been, or is being, contravened; or
- it is necessary to do so to take account of an event notified under clause 219 of the Bill, or to correct a minor or technical error; or
- the licence needs to be varied for any other reason prescribed by the rules made under clause 432 of the Bill.

The Secretary will be required to reasonably believe that one or more of grounds set out in subclause 201(2) exists before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standard for making a variation to an export licence under existing legislation.

Enabling the rules to prescribe any other reasons why an export licence may be varied will provide the Secretary with the flexibility to accommodate a range of circumstances in which the licence may need to be varied. This may be specific to a kind of export operations, kind of prescribed goods or place of export.
Notice of certain proposed variations

Subclause 201(3) will provide that the Secretary must not make a variation in relation to an export licence (except a variation of the kind referred to in paragraph 201(1)(e)) unless the Secretary has given a written notice to the holder of the licence in accordance with subclause 201(4).

Subclause 201(4) will provide that the written notice under subclause 201(3) must:

- specify each proposed variation; and
- specify the grounds for each proposed variation; and
- subject to subclause 201(5), request the holder of the export licence to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
- include a statement setting out the holder’s right to seek review of a decision to make the proposed variation.

The variation proposed by subparagraph 201(1)(d)(ii) will be to vary the licence so that it remains in force indefinitely. As such, it will be beneficial to the licence holder, and there will be no requirement for the licence holder to show cause as to why the variation should not be made.

Subclause 201(5) will provide that, if the Secretary reasonably believes that the grounds for varying the export licence are serious and urgent, the Secretary will not be required to include the request referred to in paragraph 201(4)(c) in the notice issued under subclause 201(3). However, the notice of proposed variation must still be given. Subclause 201(5) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed variation, the Secretary must give a notice of variation in accordance with clause 202 of the Bill. A decision to make the variation will remain a reviewable decision.

Clause 202 Notice of variation

Subclause 202(1) will provide that if the Secretary makes a variation in relation to an export licence under subclause 201(1) of the Bill, the Secretary must give the holder of the licence written notice of the variation.

Subclause 202(2) will provide that the notice must include the following information:

- details of the variation;
- the varied conditions of the export licence (if the variation is of the conditions of the export licence);
- the varied period of effect (if the variation affects the period of effect);
- the date the variation takes effect;
- and any other information prescribed by the rules for the purposes of clause 202.

Enabling the rules made under clause 432 of the Bill to prescribe any additional matters that will need to be set out in the notice of variation will provide the Secretary with the flexibility to ensure that the holder of the licence will be provided with all relevant information in relation to the variation. The purpose of a notice under this clause is to inform the holder of the export licence of the Secretary’s decision to make a variation, as well as the terms under which the variation is made.
Subclause 202(3) will provide that, if a notice (a *show cause notice*) was given under subclause 201(3) of the Bill that included the request referred to in paragraph 201(4)(c), the variation must not take effect until the date after any response by the holder of the licence is received or the end of the 14 day period after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to vary the export licence before the holder of the licence has had a chance to respond. If the holder of the licence does not respond within the 14 day period, the variation may be made. If the holder responds within the 14 day period, the Secretary may consider the holder’s response when deciding whether to vary the export licence.

In circumstances where the export licence needs to be changed to take account of the variation, subclause 202(4) will provide that the Secretary has seven days after making the variation to provide the holder of the export licence with a new licence that includes the variation.

A note will be included at the end of subclause 202(4) that will clarify that the export licence, as varied, remains in force as provided by clause 194 of the Bill.

**PART 5—SUSPENSION OF EXPORT LICENCE**

**Division 1— Suspension requested by holder**

**Clause 203 Holder may request suspension**

Subclause 203(1) will provide that, subject to subclause 203(2), the holder of an export licence may request the Secretary to suspend the licence in relation to a kind of export operations and a kind of prescribed goods and a place to which goods may be exported (if applicable).

Subclause 203(2) will provide that a request may be made under subclause 203(1) only in the circumstances prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe the appropriate circumstances in which the holder of an export licence may be able to request voluntary suspension of an export licence will provide the Secretary with flexibility to determine matters on, for example, a market or commodity-specific basis.

Subclause 203(3) will provide that the request to suspend the export licence under subclause 203(1) may relate to more than one kind of export operations, more than one kind of prescribed goods and, if applicable, more than one place to which goods may be exported under the licence.

Subclause 203(4) will require the request under subclause 203(1) to be in writing and to set out certain information. This information includes:

- each kind of export operations;
- prescribed goods and place in relation which the licence is to be suspended;
- the reason for the suspension; and
- any other information prescribed by the rules.

Enabling the rules to set out any other information that must be included in a voluntary request for suspension will provide the Secretary with the flexibility to ensure that all relevant information is included in the request so that the Secretary will be able to make an informed decision.
Subclause 203(5) will provide that the Secretary must, by written notice to the holder, suspend the licence if requested to do so, with effect on the day specified in the notice.

**Clause 204  Request to revoke suspension**

Subclause 204(1) will provide that, if an export licence is suspended under clause 203 of the Bill, the holder of the licence may request, in the manner set out in subclause 204(2), that the suspension be revoked. Clause 204(2) will provide that the request must be in writing, state the reason for the request and include any other information prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to set out any other information that must be included in a request to revoke a suspension will provide the Secretary with the flexibility to ensure that all relevant information is included in the request so that the Secretary will be able to make an informed decision about whether to revoke a suspension. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that requirements may need to change at short notice.

Paragraph 204(3)(a) will provide that, if the Secretary receives a request under subclause 204(1), the Secretary may revoke the suspension if the Secretary is satisfied that the reason for the suspension no longer exists and there is no reason why the suspension should not be revoked.

Paragraph 204(3)(b) will provide that if the Secretary does not revoke the suspension under paragraph 204(3)(a), the Secretary may suspend the licence under Division 2 of Part 5 of Chapter 6 of the Bill, or revoke the licence under Division 2 of Part 6 of Chapter 6.

A decision to refuse to revoke the suspension of an export licence as requested will not be a reviewable decision. This is because, if the holder of the licence requests the revocation of the suspension, the Secretary will only have three choices:

- to agree to revoke the suspension (in which case there will be no requirement for a review of the decision, as this is in line with the holder’s request);
- to suspend the licence; or
- to revoke the licence.

A note included at the end of clause 204 will advise the reader that a decision to suspend or revoke the licence will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

**Division 2—Suspension by Secretary**

**Clause 205  Grounds for suspension—general**

There are a number of grounds upon which the Secretary may suspend all or some of the matters covered by an export licence. The ability to suspend an export licence will be necessary in a range of circumstances to ensure that the export operations covered by the export licence are not comprised.

Subclause 205(1) will provide that the Secretary may suspend all or part of an export licence if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by the licence cannot be ensured;
• if the holder is a kind of person who is required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 6—the holder is not a fit and proper person;
• a requirement referred to in subclause 191(2) of the Bill is no longer met;
• a condition of the licence has been, or is being, contravened;
• the holder of the licence has not complied with a direction or a request made under the Bill or has engaged in conduct that either intimidates or hinders a person performing their functions or exercising powers under the Bill;
• the holder of the licence, or a person who manages or controls or carries out export operations covered by the licence, has:
  o made a false, misleading or incomplete statement in an application under Chapter 6 of the Bill; or
  o given false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
  o given false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
• the holder of the licence is or was an associate of a person referred to in paragraph 221(a), (b), (c) or (d);
• the holder of the licence has contravened a requirement of the Bill in relation to the licence;
• a ground prescribed by the rules made for the purposes of clause 205 of the Bill exists.

Enabling the rules under clause 432 of the Bill to prescribe other grounds for suspension will provide the Secretary with the flexibility to determine additional grounds on which it is appropriate or necessary to suspend an export licence. Such grounds may be specific to a kind of prescribed goods, kind of export operations, or place of export. This flexibility also reflects the likelihood that grounds may need to change from time to time and will need to commence at short notice.

Subparagraph 205(1)(e)(i) will provide that the Secretary may suspend the export licence (with a written notice, see subclause 171(2) of the Bill) when the holder of the licence fails to comply with a direction given by an authorised officer or the Secretary. Contravening a direction from an authorised officer or the Secretary is a serious act. It potentially compromises export operations that are taking place under the export licence and on this basis requires an appropriate regulatory response.

Subparagraph 205(1)(f)(i) will provide that the Secretary may suspend the export licence if the Secretary reasonably believes that the holder intimidated a person from performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person. Engaging in such conduct is a serious act. Such conduct may also amount to an offence under 149.1 of the Criminal Code (obstruction of Commonwealth public officials). Such conduct may also compromise export operations that are carried out in relation to the export licence (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.

The Secretary will be required to reasonably believe that the one or more grounds set out in subclause 205(1) exists before taking action under that subclause. This standard will require
the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standard for suspending an export licence under existing legislation.

Two notes will be included at the end of subclause 205(1). Note 1 will provide that a suspension must not be for more than 12 months, and will refer the reader to clause 208 of the Bill. Note 2 will advise the reader that a decision to suspend an export licence under clause 205 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Notice of proposed suspension

Subclause 205(2) will provide that the Secretary must not suspend an export licence under subclause 205(1) unless the Secretary has given a written notice to the holder of the licence in accordance with subclause 205(3).

Subclause 205(3) will provide that the written notice must:

- specify each kind of export operations, prescribed goods and place (if applicable) in relation to which the export licence is proposed to be suspended; and
- specify the grounds for the proposed suspension; and
- subject to subclause 205(4), request the holder of the export licence to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the licence should not be suspended as proposed; and
- include a statement setting out the holder’s right to seek review of a decision to suspend the licence as proposed.

Subclause 205(4) will provide that, if the Secretary reasonably believes that the grounds for the suspension are serious and urgent, then the Secretary will not be required to include the request referred in paragraph 205(3)(c) in the notice issued under subclause 205(2). However, the notice of proposed suspension must still be given. Subclause 205(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. In addition to the notice of proposed suspension, the Secretary must give a notice of suspension in accordance with clause 207 of the Bill. A decision to suspend the export licence will remain a reviewable decision.

Clause 206 Grounds for suspension—overdue relevant Commonwealth liability

Clause 206 will provide that an overdue relevant Commonwealth liability will be a ground for suspending an export licence. This clause is intended ensure timely payment of liabilities that are due and to prevent the holder of the licence from incurring further debts to the Commonwealth.

Notice of proposed suspension

Subclause 206(1) will provide that the Secretary may suspend an export licence if a relevant Commonwealth liability (which will be defined in clause 12 of the Bill) of the holder of the licence is more than 30 days overdue. Subclause 206(1) will also provide that the Secretary may suspend the export licence if:
the Secretary has given a written notice (in accordance with subclause 206(2)) to the holder of the licence (the \textit{debtor}) who is liable to pay the relevant Commonwealth liability; and

- within eight days after the notice is given:
  - the relevant Commonwealth liability has not been paid; or
  - the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

Unlike suspension under clause 205 of the Bill, the suspension of an export licence under clause 206 will be a full suspension of the licence and cannot be in relation to only some of the matters covered by the licence. This will be necessary as the overdue Commonwealth liability impacts on the whole licence and not just parts thereof.

Three notes will be included at the end of subclause 206(1). Note 1 will refer the reader to clause 208 of the Bill, which will provide that a suspension must not be for more than 12 months. Note 2 will advise the reader that a decision to suspend the registration of an establishment under clause 206 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. Note 3 will refer the reader to clause 213 of the Bill and clarify that if the Secretary suspends an export licence under clause 206, the Secretary may revoke the export licence in certain circumstances, including in relation to an overdue Commonwealth liability.

Subclause 206(2) will provide that a notice given under subclause 206(1) must:

- state that the relevant Commonwealth liability of the debtor in relation to an export licence is more than 30 days overdue; and
- state that the Secretary may suspend the export licence in relation to all kinds of export operations and all kinds of prescribed goods if, within eight days after the notice is given:
  - the relevant Commonwealth liability is not paid; or
  - the debtor has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability; and
- include a statement setting out the debtor’s right to seek a review of the decision to suspend the export licence.

\textit{Secretary may direct that activities not be carried out}

Subclause 206(3) will provide that, if the Secretary suspends an export licence under subclause 206(1), the Secretary may refuse to carry out, or direct a person (for example, an authorised officer) not to carry out, specified activities or kinds of activities in relation to the debtor under the Bill until the relevant Commonwealth liability has been paid. This will have the effect of encouraging the debtor to pay the relevant Commonwealth liability so that they will be able to continue exporting goods.

A note will be included at the end of subclause 206(3) that will refer the reader to clause 309 of the Bill, which will deal with general provisions that relate to directions.

\textit{Action under this section does not affect liability to pay relevant Commonwealth liability}

Subclause 206(4) will provide that any action taken by the Secretary under clause 206 will not remove the liability of the debtor to pay the relevant Commonwealth liability. This will mean that, for example, if the Secretary suspends the export licence under clause 206(1) because the
holder of the licence has an overdue relevant Commonwealth liability, the holder will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

**Clause 207  Notice of suspension**

Subclause 207(1) will provide that, if the Secretary decides to suspend an export licence, or part of an export licence, under either clause 205 or clause 206 of the Bill, the Secretary must give the holder of the licence a written notice of the suspension.

Subclause 207(1) will provide that the notice must include:

- a statement that the licence is to be suspended for the period specified in the notice in relation to all or specified kinds of: export operations, prescribed goods and, if applicable, or places to which goods may be exported;
- the reasons for the suspension;
- the date the suspension is to start;
- the period of the suspension.

A note will be included at the end of subclause 207(1) clarifying that the notice must also state the matters referred to in clause 382 of the Bill.

Subclause 207(2) will provide that, if a notice (a show cause notice) that was given under subclause 205(2) of the Bill that included the request referred to in paragraph 205(3)(c) of the Bill, the suspension must not start until the date after any response by the holder is received or the end of the 14 day period after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to suspend the export licence during the 14 day period. If the holder of the licence does not respond within the 14 day period, the suspension may be implemented. If the holder responds within the 14 day period, the Secretary must consider the holder’s response when deciding whether to implement the suspension.

**Clause 208  Period of suspension**

Subclause 208(1) will provide that the suspension of an export licence under Division 2 of Part 5 of Chapter 6 of the Bill (see clauses 205, 206 and 207 of the Bill) must not be for more than 12 months. This will provide certainty to the holder of the export licence about the period of the suspension and prevent an export licence from being suspended indefinitely. It is intended that the matters that necessitated the suspension will be resolved in 12 months or less. Otherwise the Secretary will have the option of revoking the licence.

Subclause 208(2) will provide that the Secretary may vary the period of a suspension by written notice to the holder of the export licence. However, the total period of suspension must not be more than 12 months. A note will be included at the end of clause 208 that will advise the reader that a decision to extend the period of suspension will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

If the reason for the suspension warrants a longer period of suspension, the Secretary may revoke the export licence under Division 2 of Part 6 of Chapter 6 of the Bill instead, provided that the relevant grounds for revocation exist (see Division 2 of Part 6 of Chapter 6 of the Bill).
Clause 209  Revocation of suspension

The suspension of an export licence need not remain in place for the entire period set out under paragraph 207(1)(d) of the Bill. Clause 209 will provide that the Secretary may revoke a suspension made under Division 2 of Part 5 of Chapter 6 of the Bill by written notice to the holder of the licence. Revocation of a suspension may occur, for example, in circumstances where the Secretary is satisfied that the grounds for the suspension no longer exist or have been rectified.

Division 3—Other provisions

Clause 210  Effect of suspension

Clause 210 will provide that the effect of a suspension of an export licence is that the licence will remain in force and the requirements of the Bill in relation to that licence will continue to apply (unless the rules made under clause 432 of the Bill say otherwise). This will allow, for example, activities such as an audit to be undertaken while the suspension is in place, for the purpose of determining compliance with requirements of the Bill.

Subclause 210(1) will provide that, if the export licence is suspended wholly or in part under Division 1 or 2 of Part 5 of Chapter 6 of the Bill, the licence remains in force while it is suspended, and the requirements of the Bill in relation to the licence (including the conditions of the licence) must be complied with while the licence is suspended.

Subclause 210(2) will provide that the rules may prescribe requirements of the Bill (including conditions of the licence) that will not apply during the period of suspension. The effect of this will be that the default position is that all requirements of the Bill, such as the requirement to be audited or to comply with a direction of an authorised officer and conditions of the export licence, will continue to apply unless the rules provide otherwise.

Enabling the rules made under clause 432 of the Bill to prescribe the requirements of the Bill or conditions of the licence that will not apply during the period of suspension will provide the Secretary with the flexibility to reduce the regulatory burden on the holder of an export licence. These requirements are likely to vary depending on the export operations, prescribed goods and places to which goods may be exported.

PART 6—REVOCATION OF EXPORT LICENCE

Division 1—Revocation requested by holder

Clause 211  Holder may request revocation

Subclause 211(1) will provide that the holder of an export licence may request the Secretary to revoke the licence. This can include an export licence where a suspension is in effect under Part 5 of Chapter 6 of the Bill.

A note will be included at the end of subclause 211(1) that will clarify that if the holder does not wish to revoke the export licence in relation to all kinds of export operations and prescribed goods, the holder may apply to vary the licence under Division 1 of Part 4 of Chapter 6 of the Bill. This will allow the holder of an export licence to apply to vary aspects of the licence including the kinds of export operations, the kinds of prescribed goods and the places to which goods are to be exported.
Subclause 211(2) will require the request under subclause 211(1) to be in writing and include the information (if any) prescribed by the rules made under clause 432 of the Bill. Enabling the rules to set out any other information that must be included in a request for revocation will provide the Secretary with the flexibility to ensure that all relevant information is included in the application so that the Secretary will be able to make an informed decision about the requested revocation.

Subclause 211(3) will provide that if the Secretary receives a request under subclause 211(1), the Secretary must, by written notice to the holder of the licence, revoke the licence with effect on the day specified in the notice. This will ensure the Secretary has sufficient time to consider the request and that the licence will not be revoked before the Secretary has considered the request. Subclause 211(3) is subject to subclause 211(4).

Subclause 211(4) will provide that the Secretary does not have to revoke the export licence if, before the holder of the licence made the request under clause 211(1), the Secretary had given the holder of the export licence a notice under clause 211(2) proposing to revoke the licence and the Secretary had not made a decision as to whether to revoke the licence.

In these circumstances, the Secretary will not be required to agree to a request to revoke the licence under subclause 211(1). This is intended to ensure that the Secretary considers the matters set out in subclause 212(1) of the Bill before accepting the request to revoke the licence. Consideration of these matters may for example, establish whether the holder has committed an offence or is liable for a civil penalty for contravening a condition of the export licence or determine the required action after the licence has been revoked (see clause 216 of the Bill).

Division 2 — Revocation by Secretary

Clause 212 Grounds for revocation—general

The ability to revoke an export licence may be necessary in a range of circumstances, including where the Secretary reasonably believes that the integrity of the prescribed goods cannot be ensured or that prescribed requirements or conditions will not be met, or in relation to certain conduct by the holder of the licence, such as a failure to comply with a direction.

The revocation of an export licence is of the whole licence and cannot be in relation to only some of the matters covered by the licence. This will reflect the likely seriousness of the circumstances necessitating a revocation by the Secretary, which cannot be dealt with by other means such as varying or suspending the export licence.

There are a number of grounds upon which the Secretary may revoke an export licence (including an export licence that is suspended under Part 5 of Chapter 6 of the Bill). These grounds will be set out in subclause 212(1). These are the same grounds as the grounds for suspension in subclause 205(1) of the Bill.

Subclause 212(1) will provide that the Secretary may revoke an export licence if the Secretary reasonably believes that:

- the integrity of a kind of prescribed goods covered by an export licence cannot be ensured;
• if the holder of the licence is a kind of person who is required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 6—the holder is not a fit and proper person;
• a requirement referred to in subclause 191(2) of the Bill is no longer met;
• a condition of the licence has been, or is being, contravened;
• the holder of the licence has not complied with a direction or a request made under the Bill or has engaged in conduct that either intimidates a person, or hinders or prevents them from performing functions or exercising powers under the Bill;
• the holder of the licence, or a person who manages or controls or carries out export operations covered by the licence, has:
  o made a false, misleading or incomplete statement in an application under Chapter 6 of the Bill; or
  o given false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
  o given false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law;
• the holder of the licence is or was an associate of a person referred to in paragraphs 221(1)(a), (b), (c) or (d) of the Bill;
• the holder of the licence has contravened a requirement of the Bill in relation to the licence;
• a ground prescribed by the rules made under clause 432 of the Bill exists.

Subparagraph 212(1)(f)(i) will provide that the Secretary may revoke an export licence if the Secretary reasonably believes that the holder intimidated a person from performing functions or exercising powers under the Bill. Intimidation in this context is not merely making the person’s task difficult but it is conduct that deters another person from performing their functions or exercising their powers under the Bill by inducing fear in the person. Engaging in such conduct is a serious act. It may compromise export operations covered by the export licence (and therefore the integrity of goods) and on this basis will require an appropriate regulatory response.

The Secretary will be required to reasonably believe that the one or more grounds set out in subclause 212(1) exists before taking action under that subclause. This standard will require the Secretary to base the Secretary’s own belief on objective circumstances but does not go so far as to require that the ground be established on the balance of probabilities. The requirement is, however, more than having a reasonable suspicion that the ground exists. This threshold test will generally reflect the existing standard for revoking an export licence under existing legislation.

Enabling the rules to prescribe any additional grounds on which the export licence may be revoked will provide the Secretary with the flexibility to address the wide range of matters that relate to an export licence and that might impact on the licence, thereby necessitating the revocation of the licence.

A note will be included at the end of subclause 212(1), which will advise the reader that a decision to revoke an export licence under clause 212 will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.
Notice of proposed revocation

Subclause 212(2) will provide that the Secretary must not revoke an export licence under subclause 212(1) unless the Secretary has given a written notice to the holder of the licence in accordance with subclause 212(3).

Subclause 212(3) will provide that the written notice must:

- specify the grounds for the proposed revocation; and
- subject to subclause 212(4), request the holder of the export licence to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why the licence should not be revoked; and
- include a statement setting out the holder’s right to seek review of a decision to revoke the licence.

Subclause 212(4) will provide that, if the Secretary reasonably believes that the grounds for the revocation are serious and urgent, then the Secretary will not be required to include the request in paragraph 212(3)(b) in the notice issued under subclause 212(2). Subclause 212(4) does not limit the factors the Secretary may take into account when determining if the grounds are serious or urgent. This will be decided on a case-by-case basis. However, the notice of proposed revocation must still be given. In addition to the notice of proposed revocation, the Secretary must give a notice of revocation in accordance with clause 214 of the Bill. A decision to revoke the export licence will be a reviewable decision.

Clause 213  Grounds for revocation—overdue relevant Commonwealth liability

Clause 213 will provide that an overdue liability to the Commonwealth will be grounds for revoking an export licence. This clause is intended to ensure timely payment of liabilities that are due and to prevent the licence holder from incurring further debts to the Commonwealth.

Subclause 213(1) will provide that the Secretary may revoke an export licence if:

- the licence has been suspended under subclause 206(1) of the Bill for non-payment of a relevant Commonwealth liability; and
- within 90 days after the start of the suspension, the relevant Commonwealth liability has not been paid, or the person (the debtor) who is liable to pay the debt has not entered into an arrangement with the Secretary to pay the relevant Commonwealth liability.

As with a revocation under clause 212 of the Bill, a revocation under clause 213 is a full revocation of the export licence and cannot be in relation to only some of the matters covered by the licence.

A note will be included at the end of subclause 213(1) that will advise the reader that a decision to revoke an export licence under clause 213 is a reviewable decision, and will refer the reader to Part 2 of Chapter 11.

Secretary may direct that activities not be carried out

Subclause 213(2) will provide that, if the Secretary revokes an export licence under subclause 213(1), the Secretary may also refuse to carry out, or direct a person (for example,
an authorised officer) not to carry out, specified activities or kinds of activities in relation to the debtor under the Bill, until the relevant Commonwealth liability has been paid.

A note will be included at the end of subclause 213(2) that will refer the reader to clause 309 of the Bill, which deals with general provisions that relate to directions.

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

Subclause 213(3) will provide that any action taken by the Secretary under clause 213 does not affect the liability of the debtor to pay the relevant Commonwealth liability. This will mean that if, for example, the Secretary revokes the export licence under subclause 213(1) because the holder of the licence has an overdue relevant Commonwealth liability, the holder will still be liable to pay the overdue amount to the Commonwealth. The overdue amount will be recoverable as a debt due to the Commonwealth under clause 404 of the Bill.

**Clause 214 Notice of revocation**

Subclause 214(1) will provide that, if the Secretary revokes an export licence under Division 2 of Part 6 of Chapter 6 of the Bill (see clauses 212 and 213 of the Bill), the Secretary must give the holder of the licence a written notice of the revocation.

Subclause 215(1) will provide that the notice must state that the licence is to be revoked, the reasons for the revocation, and the date the revocation is to take effect.

A note will be included at the end of subclause 214(1) that will provide that the notice must also state the matters referred to in clause 382 of the Bill.

Subclause 214(2) will provide that if a notice (a *show cause notice*) was given under subclause 212(2) of the Bill that includes the request referred to in paragraph 212(3)(b) of the Bill, the revocation must not take effect until the date after any response by the holder is received or the end of the 14 day period after the show cause notice was given, whichever is earlier. The effect of this is that the Secretary will be prevented from taking any action to revoke the export licence during the 14 day period. If the holder does not respond within the 14 day period, the revocation may be implemented. If the holder responds within the 14 day period, the Secretary must consider the holder’s response when deciding whether to implement the revocation.

**Division 3 — Other provisions**

**Clause 215 Export operations must not be carried out after export licence revoked**

Clause 216 will provide that penalties may be imposed in circumstances where export operations are carried out after an export licence is revoked.

Subclause 215(1) will provide that the holder of an export licence will contravene subclause 215(1) if the holder is given a notice of revocation under subclauses 211(3) or 214(1) of the Bill, and export operations that were covered by the licence were carried out after the revocation took effect.

A note will be included at the end of subclause 215(1) that will provide that the physical elements of an offence against subclause 215(2) will be set out in subclause 215(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 215(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 215(1). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 215(1) will be 600 penalty units.

Subclause 215(3) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 215(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 215(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 215(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 215(3) of 240 penalty units is twice as high as the penalty available for the criminal offence. This will ensure it will act as a deterrent, particularly for corporations, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of conducting export operations after an export licence has been revoked. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may adversely impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 216 Secretary may require action to be taken after export licence revoked**

Clause 216 will provide that penalties may be imposed in circumstances where a person contravenes a direction that required the person to take specified action after an export licence was revoked.

Subclause 216(1) will provide that clause 216 will apply if a person was given a notice of revocation under subclauses 211(3) or 214(1) of the Bill (for example, if a notice has been given but the export licence has not yet been revoked) or the export licence has been revoked under Division 1 or 2 of Part 6 of Chapter 6 of the Bill.

Subclause 216(2) will provide that the Secretary may direct a person to take specified action, within a specified period, in relation to export operations and goods that were covered by the export licence. The action must be an action that is necessary for the purpose of achieving one or more objects of the Bill.

Subclause 216(3) will provide that a direction under subclause 216(2) of the Bill must state that, if the person does not comply with the direction, the person could commit an offence or be liable to a civil penalty. A note will be included at the end of subclause 216(3) that will refer the reader to clause 309 of the Bill, which is the general provision relating to directions.
Subclause 216(4) will provide that a person who is given a direction under subclause 216(2) must comply with that direction.

Subclause 216(5) will provide that a person will commit a fault-based offence if the person is given a direction under subclause 216(2) and the person engages in conduct that contravenes the direction. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 216(4) will be 600 penalty units.

Subclause 216(6) will provide that a person will be liable to a civil penalty if the person contravenes subclause 216(4). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 216(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 216(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 216(6) of 240 penalty units is twice as high as the penalty available for the criminal offence. This will ensure the penalty will act as a deterrent, particularly for corporations, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of failing to comply with a direction of the Secretary in relation to export operations and goods that were covered by an export licence that has been revoked. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 7—OBLIGATIONS OF HOLDERS OF EXPORT LICENCES

Clause 217 Conditions of export licence must not be contravened

Clause 217 will provide that penalties will be able to be imposed on the holder of an export licence in circumstances where a condition of the licence is contravened and either the export licence is not suspended (see subclauses 217(1), 217(2) and 217(3)) or the export licence is suspended (see subclauses 217(4), 217(5) and 217(6)).

Export licence that is not suspended

Subclause 217(1) will provide that a holder of an export licence will contravene subclause 217(1) if the licence is not suspended (wholly or in part) under Part 5 of Chapter 6 of the Bill, and a condition of the licence is contravened.

A note will be included at the end of subclause 217(1) that will provide that the physical elements of an offence against subclause 217(2) will be set out in subclause 217(1) of the Bill.
The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 217(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 217(1). The fault-based offence will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 217(1) will be determined in accordance with the formula at clause 50A.

Subclause 217(3) will provide that strict liability will apply to the elements of the offence in paragraph 217(1)(c) (that a condition of the export licence is contravened). The effect of this is that the prosecution will only be required to prove the physical elements in paragraph 217(1)(c) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraph 217(1)(c) are matters of law. They concern the condition of export licences. It is appropriate for these elements to be strict liability because persons engaged as holders of export licences should know their legal obligations before obtaining an export licence. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who hold export licences knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 217(1)(c) will not affect the need for the prosecution to prove fault elements for other parts of the offence under paragraphs 217(1)(a) (that the person is the holder of an export licence) or 217(1)(b) (that the licence is not suspended wholly or in part under Part 5 of Chapter 6 of the Bill).

Subclause 217(4) will provide that a person will be liable to a civil penalty if the person contravenes subclause 217(1). The civil penalty provision will be subject to a penalty of 4,000 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 217(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 217(1) will be determined in accordance with the formula at clause 50A.

Export licence that is suspended

Subclause 217(5) will provide that the holder of an export licence will contravene subclause 217(5) if the licence is suspended (wholly or in part) under Part 5 of Chapter 6 of the Bill, and a condition of the licence is contravened.

A note will be included at the end of subclause 217(5) that will provide that the physical elements of an offence against subclause 217(6) will be set out in subclause 217(5) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 217(6) will provide that a person will commit a fault-based offence if the person contravenes subclause 217(5). The fault-based offence that will be prescribed by
subclause 217(6) will be subject to a penalty of imprisonment for ten years or a fine of 2,000 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 217(6) will be determined in accordance with the formula at clause 50A.

Subclause 217(7) will provide that strict liability will apply to the elements of the offence in paragraphs 217(5)(c) (that a condition of the export licence is contravened) and 217(5)(d) (that the condition is required to be complied with during the period of the suspension). The effect of this is that the prosecution will only be required to prove the physical elements in paragraphs 217(5)(c) and 217(5)(d) beyond reasonable doubt, and will not be required to prove fault for these elements. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The elements of the offence in paragraph 217(5)(c) and 217(5)(d) are matters of law. They concern the condition of export licences and whether conditions should be required to be complied with during a period of suspension. It is appropriate for these elements to be strict liability because persons engaged as holders of export licences should know their legal obligations before obtaining an export licence. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who hold export licences knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 217(5)(c) and 217(5)(d) will not affect the need for the prosecution to prove fault elements for other parts of the offence under paragraphs 217(5)(a) (that the person is the holder of an export licence) or 217(5)(b) (that the licence is suspended wholly or in part under Part 5 of Chapter 6 of the Bill).

Subclause 217(8) will provide that a person will be liable to a civil penalty if the person contravenes subclause 217(5). The civil penalty provision will be subject to a penalty of 4,000 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 217(8). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 217(8) will be determined in accordance with the formula at clause 50A.

The penalties for both the fault-based offences and the civil penalty provisions reflect the seriousness of failing to comply with the conditions of an export licence, irrespective of whether the export licence is, or is not, suspended. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and may adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.
Clause 218 Additional or corrected information in relation to application for licence etc.

Clause 218 will set out the circumstances in which the holder of an export licence must provide the Secretary with additional or corrected information in relation to an application for an export licence.

Subclause 218(1) will require the holder of an export licence to give the Secretary additional or corrected information in accordance with subclause 218(2) if:

- the holder becomes aware that information included in an application made by the holder under Chapter 6 of the Bill, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
- a change prescribed by the rules made under clause 432 of the Bill occurs.

However, subclause 218(2) will only create an obligation on the holder of an export licence to give the Secretary the additional or corrected information required under subclause 218(1) to the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to a matter covered by the export licence have been, or are being, or will be complied with; or
- the importing country requirements in relation to a matter covered by the licence have been, are being, or will be complied with or met.

Subclause 218(2) will also require the holder of an export licence to give the Secretary the additional or corrected information as soon as practicable. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis. Additional or corrected information that will not be relevant to that assessment will not need to be provided to the Secretary.

It is necessary for the Secretary to have the most up-to-date information to determine whether anything needs to be done in relation to the licence. It may be that an export licence was issued in circumstances where, had the Secretary had the correct information, the licence may not have been issued.

Enabling rules to prescribe a change (or changes) where the holder of an export licence is required to give the Secretary additional or corrected information will provide the Secretary with the flexibility to determine additional matters that are of importance and are not otherwise covered by paragraph 218(1)(a). The ability to prescribe these changes also reflects the likelihood that they will need to change from time to time and will need to commence at short notice.

Three notes will be included at the end of subclause 218(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application, or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to conduct that is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.
Note 2 will refer the reader to paragraphs 205(1)(i) and 212(1)(i) of the Bill. The note will clarify that the Secretary may suspend or revoke the export licence if the holder of the licence fails to comply with subclause 218(2) of the Bill. It is intended that the Secretary could suspend or revoke the export licence under paragraphs 205(1)(i) and 212(1)(i) of the Bill, in addition to any civil penalty imposed under subclause 218(3).

Note 3 will provide that clause 218 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive additional or corrected information in relation to an application for an export licence and, if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 218(3) will provide that a person will be liable to a civil penalty if they are required to give additional or corrected information to the Secretary under subclause 218(2) and fail to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 218. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 218 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to the holder of a licence from not providing corrected or additional material to the Secretary. Such conduct may impede the effective regulation of exports under the Bill. It will be necessary for the Secretary to have relevant and correct information to determine whether something should be done in relation to the export licence, for example, a variation, suspension or revocation. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

Clause 219  Notice of changes to holder of export licence

Subclause 219(1) will require the holder of an export licence to notify the Secretary in writing as soon as practicable after any of the following events occurs:

- there is a change in the holder’s business structure;
- if the holder is an individual—the individual enters into a personal insolvency agreement under Part X of the Bankruptcy Act;
- if the holder is a corporation—the corporation enters into administration (within the meaning of section 435C of the Corporations Act) or is to be wound up;
- there is a change in the trading name, business address or contact details of the holder;
- any other event prescribed by the rules made under clause 432 of the Bill.
It is necessary for the Secretary to be notified of changes to the holder so the Secretary can determine whether it is appropriate for the export licence to remain in place. The provision of information may lead the Secretary to take certain action, such as suspension or revocation of a licence. Enabling the rules to prescribe other events for which the holder will be required to notify the Secretary will give the Secretary the flexibility to respond to changes that may impact on the suitability of the licence holder to carry out export operations, which are not otherwise covered by subclause 219(1). The ability to prescribe these changes also reflects the likelihood that they may be specific to a kind of prescribed goods, export operations, or place of export, and will need to change from time to time and will need to commence at short notice.

The following two examples will be included at the end of subclause 219(1), which will clarify when there will be a change in the holder’s business structure for the purpose of paragraph 219(1)(a):

- a change in a person who participates in the management or control of the holder’s export business;
- if the holder is a partnership—a change in the membership of the partnership.

A note will be included at the end of subclause 219(1) that will provide that the Secretary may suspend or revoke the export licence if:

- the holder of the licence is not a fit and proper person (see paragraphs 205(1)(b) and 212(1)(b)) of the Bill); or
- the holder fails to comply with this subclause (see paragraphs 205(1)(i) and 212(1)(i) of the Bill).

Subclause 219(2) will provide that a person will be liable to a civil penalty if the holder of an export licence is required to notify the Secretary of an event or circumstance under subclause 219(1) and fails to comply with that requirement. The civil penalty provision will be subject to a penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 219. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 219 will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This penalty is intended to provide an effective deterrent to the holder of an export licence from not providing the information to the Secretary. It will be necessary for the Secretary to be aware of events or changes to determine whether any action needs to be taken in relation to the export licence. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
PART 8—OTHER MATTERS

Clause 220  Persons who participate in the management or control of another person’s export business

Subclause 220(1) will provide that, for the purposes of Chapter 6 of the Bill, a person (the first person) is taken to be a person who participates or would participate in the management or control of an export business or proposed export business of another person if:

- the first person has, or would have, authority to direct the export operations, or an important or substantial part of the export operations, carried out, or to be carried out, by or in connection with, the other person’s export business or proposed export business; or
- the first person has, or would have, authority to direct another person who has, or would have, authority of the kind referred to in paragraph 220(1)(a) in the exercise of that authority or proposed authority.

Subclause 220(2) will provide that if a corporation (the first corporation) has applied for, or is the holder of, an export licence; and

- a corporation (the related corporation) that is related to the first corporation proposes to carry out, or carries out, export operations in relation to a kind of prescribed goods to which the application relates or that are covered by the export licence; and
- the export operations are proposed to be carried out, or are carried out, wholly or partly, in connection with the export business, or proposed export business, of the first corporation;

the export operations are taken, for the purposes of Chapter 6 of the Bill, to be export operations proposed to be carried out, or carried out, by the first corporation as part of the first corporation’s export business or proposed export business.

Subclause 220(3) will provide that, for the purposes of subclause 220(2), the question of whether corporations are related to each other is to be determined in the same manner as the question would be determined under the Corporations Act.

Clause 221  Secretary’s powers in relation to associates of holder of export licence

Subclause 221(1) will be an application provision that will provide that clause 221 applies if the Secretary:

- refuses to grant an export licence to a person under clause 191 of the Bill; or
- decides not to renew a person’s export licence under clause 196 of the Bill; or
- suspends a person’s export licence (wholly or in part) under Division 2 of Part 5 of the Bill; or
- revokes a person’s export licence under Division 2 of Part 6 of the Bill.

Subclause 221(2) will provide that, in these circumstances, the Secretary may do either or both of the following, on one or more occasions:

- refuse to grant an export licence to an associate of a person referred to in subclause 221(1);
• if an associate of a person referred to in subclause 221(1) of the Bill is or becomes the holder of an export licence—give the associate a written notice in accordance with subclause 221(3). The meaning of associate will be set out in clause 13 of the Bill.

Clause 221 is intended to ensure that the integrity of the export market is maintained by providing that a person who is associated with a person referred to in subclause 221(1) will be subject to additional control and oversight.

Subclause 221(3) will provide that a notice under paragraph 221(2)(b) must:

• specify the grounds on which the notice is given; and

• request the associate to give the Secretary, within 14 days after the day the notice is given, a written statement showing cause why an export licence held by the associate:
  o should not be suspended, or further suspended, under Division 2 of Part 5 of the Bill; or
  o should not be revoked under Division 2 of Part 6 of the Bill; and

• include a statement setting out the associate’s right to seek review of a decision:
  o to suspend, or further suspend, under Division 2 of Part 5 of the Bill an export licence held by the associate; or
  o to revoke under Division 2 of Part 6 of the Bill an export licence held by the associate.

This will mean that the associate must show cause as to why their export licence should not be suspended or revoked because they are an associate of a person referred to in subclause 221(1).

**Clause 222 Secretary may give directions to holder of export licence**

Subclause 222(1) will enable the Secretary to give written directions to the holder of an export licence.

Two notes will be included at the end of clause 222(1). Note 1 will provide that an authorised officer may also give a direction to the holder of the export licence under clause 305 of the Bill (direction to deal with non-compliance with the requirements of the Bill). Note 2 will refer the reader to clause 309 of the Bill which will set out the general provisions relating to directions.

Subclause 222(2) will provide examples of the types of directions that may be given under subclause 222(1). They may:

• prohibit (either absolutely or unless particular conditions are complied with) a kind of export operations being carried out in relation to a kind of prescribed goods by reference to any matter that the Secretary considers appropriate; or

• require the holder of the licence to obtain the approval of the Secretary before carrying out a kind of export operations in relation to a kind of prescribed goods; or

• require the holder of the licence to carry out specified activities in connection with a kind of export operations carried out in relation to a kind of prescribed goods; or

• require the holder of the licence to give the Secretary specified information or documents relating to a kind of export operations carried out in relation to a kind of prescribed goods; or
require the holder of the licence to allow the Secretary, or a person with appropriate qualifications or expertise, to enter premises where a kind of export operations are being carried out in relation to a kind of prescribed goods covered by the licence; or
do anything else prescribed by the rules made under clause 432 of the Bill.

Subclause 223(3) will provide that, in considering whether to give a direction under subclause 223(1), the Secretary must have regard to the matters prescribed by the rules.

Enabling the rules to prescribe any other types of directions that may be given under subclause 223(1) will provide the Secretary with the flexibility to respond to changing conditions that may impact on the export licence and export licence holder.

Subclause 222(4) of the Bill will provide that an export licence is subject to the condition that the holder of the licence must comply with any directions given from time to time to the holder under clause 222. A note will be included at the end of subclause 222(4) that will refer the reader to clause 217 of the Bill, which provides that conditions of export licences must not be contravened, and the holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened.

Subclause 222(5) will provide that if a direction given to the holder of an export licence under subclause 222(1) is inconsistent with the rules or a condition of the licence, the direction prevails and the rules or condition, to the extent of the inconsistency, do not have any effect.

Chapter 7—Export permits

PART 1—INTRODUCTION

Clause 223 Simplified outline of this Chapter

Clause 223 will provide for a simplified outline of Chapter 7 of the Bill. Chapter 7 of the Bill will provide that a person may apply to the Secretary for an export permit for a kind of prescribed goods. The Secretary, or in relation to certain kinds of prescribed goods, a nominated export permit issuer, must decide whether to issue the export permit. It will also set out the powers that the Secretary may exercise in relation an application for an export permit.

Chapter 7 of the Bill will also provide that an export permit may be subject to certain conditions, must be issued in writing, and will have effect for a particular period. An export permit may be varied, suspended or revoked, and may be required to be returned. It will also provide that if an export permit is in force for a kind of prescribed goods, the Secretary may require an assessment of the goods to be carried out; and provide that a person who holds, or has applied for, an export permit must give the Secretary additional or corrected information in certain circumstances.

The simplified outline is included to assist the reader to understand the substantive clauses of Chapter 7 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
PART 2—ISSUE OF EXPORT PERMITS

Clause 224    Application for export permit

Subclause 224(1) will enable a person to apply to the Secretary for an export permit for a kind of prescribed goods.

Subclause 224(2) will provide that an application:

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

Subclause 224(2) is intended to ensure flexibility in the application process. For example, it will allow a person to apply for an export permit that covers more than one kind of prescribed goods, such as apples and cherries. It will also allow an exporter to apply for multiple export permits in one application. The ability to specify the place to which the prescribed goods will be exported will be relevant if, at the time of making the application, that place is known. Otherwise there is flexibility in enabling the application to be silent on this issue.

Two notes will be included at the end of subclause 224(2). Note 1 will refer the reader to clause 29 of the Bill, and the rules made under clause 432 of the Bill for the purposes of clause 29. The note will clarify that an export permit and conditions relating to an export permit may be prescribed export conditions. This means that the export of a kind of prescribed good may be prohibited unless the exporter holds an export permit that authorises the export of the prescribed goods and complies with any conditions in relation to the permit.

Note 2 will refer the reader to clause 239 of the Bill, which will set out the requirements for export permit applications.

Clause 225    Secretary must decide whether to issue export permit

Subclause 225(1) will provide that, if an application for an export permit is made under clause 224 of the Bill, the Secretary must decide to issue the export permit or refuse to issue the export permit.

Three notes will be included at the end of subclause 225(1). Note 1 will clarify that if a person applies for an export permit for more than one kind of prescribed goods for export to more than one place, the Secretary may decide to issue an export permit for some or all of those kinds of prescribed goods for export to some or all of those places. Note 2 will clarify that a nominated export permit issuer may issue an export permit for certain kinds of prescribed goods in certain circumstances (see the definition of nominated export permit issuer in section 12 and paragraph 288(2)(c)). Note 3 will refer the reader to clause 286 of the Bill, which will set out the power for the Secretary to arrange for certain decisions to be made by the operation of a computer program.

Subclause 225(2) will clarify that the Secretary may have regard to any matter that the Secretary considers relevant in relation to the application, including the following:

- whether the requirements of the Bill have been complied with, or will be complied with before the prescribed goods to which the application relates are imported into the importing country; and
• whether the importing country requirements relating to the prescribed goods to which the application relates have been met, or will be met before the prescribed goods are imported into the importing country.

This broad discretion will be necessary for the Secretary to determine whether there will be a sound basis for the issue of an export permit, as the export of prescribed goods that do not meet relevant legislative and importing country requirements may damage international confidence in Australia’s trading reputation and adversely impact market access.

A note will be included at the end of paragraph 225(2)(b) that will refer the reader to clause 241 of the Bill, which provides that the Secretary may exercise powers in relation to the application.

Subclause 225(3) will provide that if the Secretary decides not to issue the export permit, the Secretary must give the applicant written notice of the decision.

A decision made under clause 225 will not be a reviewable decision due to the broad implications for Australia’s export industry. Decisions regarding export permits represent the final permission for prescribed goods to be exported once all other requirements and conditions have been met. Whether the application for an export permit meets all those requirements and conditions will therefore determine whether an export permit will be issued. As a result, if an export permit is refused, it is because those requirements or conditions have not been met. Issuing an export permit in such circumstances could undermine international confidence in Australia’s ability to effectively regulate the export of goods. Further, permits are high volume decisions and often made in relation to perishable items. Given the specific timeframes that an exporter may be operating under, providing for the review of a decision made under clause 225 would not be practical. The Bill would not prevent a person from making a new application for an export permit in relation to the same prescribed goods if the first application is refused.

Clause 226 Requirements for export permit

Subclause 226(1) will provide that a unique number must be allocated to each export permit. This number will facilitate the clearance of prescribed goods for export by the Australian Department of Immigration and Border Protection.

Subclause 226(2) will provide that all export permits must be issued in writing, including export permits issued by the operation of a computer program under clause 286 of the Bill. This is necessary to ensure that the authority for the export of prescribed goods is clear and that relevant details of the goods are included on the permit.

Subclause 226(3) will provide that all export permits must state the number allocated to the export permit under subclause 226(1) and include any other information prescribed by the rules. Enabling the rules made under clause 432 of the Bill to provide for the matters that will be included on an export permit is necessary to accommodate the information relevant to, for example, a particular kind of prescribed goods, or place of export, and the likelihood that information requirements will change from time to time and will need to commence at short notice.
Clause 227  

**Conditions of export permit**

Clause 227 will allow conditions to be imposed on an export permit and will deal with certain matters relating to these conditions. The holder of an export permit may commit an offence or be liable to a civil penalty if they engage in conduct that contravenes a condition of a permit.

Subclause 227(1) will provide that an export permit will be subject to conditions, including:

- any conditions prescribed by the rules; and
- any additional conditions specified in a written notice given to the holder of the export permit.

Two notes will be included at the end of subclause 227(1). Note 1 will refer the reader to clause 233 of the Bill, which will set out the grounds on which the Secretary may revoke an export permit. It will provide that the holder of an export permit may have their export permit revoked if a condition on the export permit has been or is being contravened. Note 2 will clarify that conditions prescribed by rules made for the purposes of paragraph (a) may be varied by amending the rules as well as referring the reader to clause 229 of the Bill, which will set out the power of the Secretary to vary any condition of an export permit that is not prescribed by the rules.

Subclause 227(2) will clarify that the conditions imposed by paragraphs 227(1)(a) or 227(1)(b) may require the holder of an export permit to comply with the conditions before or after the export of the prescribed goods to which the export permit relates. Conditions that apply after export will not be prescribed export conditions provided for in clause 29 of the Bill for the purposes of the offence provisions in Division 4 of Part 1 of Chapter 2 of the Bill. However, the holder of an export permit will still be subject to the penalty provisions in clause 227 if conditions that apply after export are contravened.

Enabling rules made under clause 432 of the Bill to prescribe conditions to which an export permit is subject is necessary to accommodate the different kinds of prescribed goods and places of export. It also supports the likelihood that conditions will need to change from time to time and will need to commence at short notice.

Subclause 227(3) will clarify that the conditions to which an export permit is subject under subclause 227(1) are conditions of the export permit. This expression will be used in a number of provisions of the Bill, including clause 266 of the Bill in relation to audits.

Subclauses 227(4) and (5) will provide that penalties may be imposed in circumstances where a person contravenes conditions of an export permit.

Subclause 227(4) will provide that the holder of an export permit that is in force will commit a fault-based offence if the holder engages in conduct that contravenes a condition of the export permit. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 227(4) will be 600 penalty units.

Subclause 227(5) will provide that the holder of an export permit that is in force will be liable to a civil penalty of 240 penalty units if the holder engages in conduct that contravenes a condition of the export permit. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay for a contravention of subclause 227(5). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the
Commonwealth for a contravention will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 227(5) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty for the fault-based offence and the civil penalty reflect the seriousness of conduct that contravenes the conditions of an export permit, which may result in an importing country receiving goods that do not meet the requirements of the Bill or importing country requirements. Conduct that contravenes the conditions of an export permit may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods and have economic consequences for Australia.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 228 Period of effect of export permit

Clause 228 will provide that an export permit takes effect when it is issued and will remain in force for the period prescribed by rules made under clause 432 of the Bill, unless it is revoked earlier under clause 233 of the Bill. The period of effect, as prescribed by the rules, will make clear the duration for which an export permit will remain valid.

Enabling the rules to prescribe the period of effect for an export permit provides the Secretary with the flexibility to determine the appropriate period of time that an export permit is in force for a kind of prescribed good. This may depend on the length of time a kind of good is suitable for export following the issue of an export permit. For example, perishable food may need to be exported shortly after the issue of an export permit to ensure its integrity. It also reflects the likelihood that the period of effect may change from time to time in line with the Government’s operating requirements.

A note will be included at the end of clause 228 to refer the reader to clause 232 of the Bill, which will clarify that an export permit that is suspended under subclause 231(1) of the Bill will remain in force while it is suspended. This will allow functions and powers authorised under the Bill (for example, an audit or assessment of prescribed goods) to continue. However, while the export permit is suspended, it will not authorise the export of the prescribed goods for which it was issued.

PART 3—VARIATION, SUSPENSION AND REVOCATION OF EXPORT PERMIT

Clause 229 Secretary may vary export permit or conditions of permit

Clause 229 will enable a variation to be made to an export permit, or a condition on the export permit, which is in force. This is important, as export permits may be issued prior to the export of prescribed goods. This clause is intended to allow the Secretary to vary an export permit, or conditions on an export permit, to ensure that the export of the prescribed goods for
which an export permit is issued continues to be appropriate, and that details and conditions on the export permit are correct.

Subclause 229(1) will provide that the Secretary may only vary an export permit or any conditions on an export permit specified under paragraph 227(1)(b), including by the imposition of new conditions, if:

- the Secretary reasonably believes that circumstances prescribed by the rules made under clause 432 of the Bill exist; or
- the variation is necessary to correct a minor technical error in the permit.

Subclause 229(2) provides that conditions of an export permit that are varied under subsection (1), may be required to be complied with before or after the export of the goods to which the export permit relates. This is intended to avoid any inconsistency between a condition prescribed by the rules and a condition on a permit varied by the Secretary.

Subclause 229(3) will enable the Secretary to vary an export permit or condition of an export permit, on the Secretary’s own initiative, or on application from the export permit holder.

Two notes will be included at the end of subclause 229(3). Note 1 will refer the reader to clause 239 of the Bill, which will set out the requirements for an application to vary an export permit or condition on an export permit. Note 2 will refer the reader to clause 241 of the Bill, which provides that the Secretary may exercise powers in relation to an application by the holder of the permit.

If the Secretary varies an export permit or conditions on an export permit under subclause 229(1), subclause 229(4) will create an obligation on the Secretary to:

- issue the varied export permit to the export permit holder; and
- if the variation was made on the Secretary’s own initiative—give the holder a written notice stating the reasons for the variation.

If the Secretary varies conditions of an export permit under subclause 229(1), subclause 229(5) will create an obligation on the Secretary to give the permit holder a written notice stating:

- the varied conditions and any new conditions;
- if the variation was made on the Secretary’s own initiative—the reasons for the variation;
- the date the varied conditions are to take effect.

If the Secretary decides not to vary an export permit or a condition of the export permit in accordance with an application, subclause 229(6) will create an obligation on the Secretary to provide the export permit holder with a written notice of the decision. The notice must include the reasons why the Secretary decided not to vary the export permit or a condition of the export permit in accordance with the application.

A decision made under clause 229 to not vary an export permit will not be a reviewable decision due to the broad implications for Australia’s export industry. Decisions regarding export permits represent the final permission for prescribed goods to be exported once all other requirements and conditions have been met. Whether an export permit continues to meet all those requirements and conditions will therefore determine whether an export permit should be varied. As a result, if an export permit is varied, it may be because those
requirements or conditions are no longer being met. Varying an export permit in such circumstances could undermine international confidence in Australia’s ability to effectively regulate the export of goods.

**Clause 230   Period of effect of varied export permit**

Clause 230 will provide that a varied export permit will take effect when it is issued and will remain in force for the period prescribed by the rules, unless it is revoked earlier in accordance with clause 233 of the Bill. The period of effect, as prescribed by the rules, will make clear the duration of time that a varied export permit will remain valid.

Enabling the rules made under clause 432 of the Bill to prescribe the period of effect for a varied export permit provides the Secretary with the flexibility to determine the appropriate period of time that a varied export permit may be in force for a particular kind of prescribed good. This may depend on the length of time a kind of good is suitable for export following the variation. For example, perishable food may need to be exported shortly after an export permit is varied to ensure the integrity of the prescribed goods. It also reflects the likelihood that the period of effect for a varied export permit may change from time to time in line with the Government’s operating requirements.

A note will be included at the end of clause 230 to refer the reader to clause 232 of the Bill, which will clarify that an export permit suspended under subclause 231(1) of the Bill will remain in force while it is suspended. This will allow functions and powers authorised under the Bill (for example, an audit or assessment of goods) to continue to be performed or exercised. However, while the export permit is suspended, it will not authorise the export of the prescribed goods for which it was issued.

**Clause 231   Secretary may suspend export permit**

Subclause 231(1) will enable the Secretary to suspend an export permit if the Secretary reasonably believes that circumstances prescribed by the rules exist. An export permit that is suspended will remain in force but, while the permit is suspended, it does not authorise the export of the prescribed goods for which it was issued (see clause 232 of the Bill).

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances in which an export permit may be suspended provides the Secretary with the flexibility to determine when it is appropriate to do so. This may include circumstances where a requirement of the Bill or an importing country requirement cannot be complied with. The ability to prescribe these circumstances in the rules also reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

If the Secretary decides to suspend an export permit, subclause 231(2) will create an obligation on the Secretary to give the holder of the export permit a written notice stating:

- that the export permit is to be suspended; and
- the reasons for the suspension.

A decision made under clause 231 to suspend an export permit will not be a reviewable decision due to the broad implications for Australia’s export industry. Decisions regarding export permits represent the final permission for prescribed goods to be exported once all other requirements and conditions have been met. Whether an export permit continues to meet all those requirements and conditions will therefore determine whether an export permit
should be suspended. As a result, if an export permit is suspended, it may be because those requirements or conditions are no longer being met. Not suspending an export permit in such circumstances could undermine international confidence in Australia’s ability to effectively regulate the export of goods.

Subclause 231(3) will provide that if an export permit is suspended under subclause 232(1), the Secretary may revoke the suspension by written notice to the holder of the export permit.

Clause 232  Effect of suspension

Subclause 232(1) will provide that if the Secretary suspends an export permit, the suspension will take effect when the export permit holder receives written notice of the suspension.

Subclause 232(2) will provide that an export permit that is suspended remains in force while it is suspended. This will allow functions and powers authorised under the Bill (for example, an audit or assessment of goods) to continue to be exercised. However, while the export permit is suspended, it does not authorise the export of the prescribed goods for which it was issued.

Clause 233  Secretary may revoke export permit

Subclause 233(1) will enable the Secretary to revoke an export permit for a kind of prescribed goods (including an export permit that is suspended under subclause 231(1) of the Bill). If an export permit is revoked, the export permit holder will no longer be able to export the prescribed goods to which the export permit relates using that export permit. The Secretary will be able to be revoke an export permit if the Secretary reasonably believes that:

- the integrity of the prescribed goods cannot be ensured; or
- a condition of the export permit has been, or is being, contravened; or
- the requirements of the Bill have not been complied with, or are not likely to be complied with before the prescribed goods are imported into the importing country; or
- an importing country requirement relating to the prescribed goods will not be, or is not likely to be, met before the prescribed goods are imported into the importing country; or
- the holder of the export permit:
  - made a false, misleading or incomplete statement in the application for the export permit; or
  - gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Bill; or
  - gave false, misleading or incomplete information or documents to the Secretary, or the Department, under a prescribed agriculture law; or
- the holder of the export permit has contravened a requirement of the Bill; or
- circumstances prescribed by the rules exist.

Enabling the rules made under clause 432 of the Bill to prescribe circumstances in which an export permit may be revoked provides the Secretary with the flexibility to determine when it is appropriate to revoke an export permit in situations that are not otherwise accommodated under clause 233. The circumstances that may be prescribed in the rules could arise for a range of unforeseen technical or administrative reasons. They may also be specific to a kind of prescribed good. The ability to prescribe these circumstances in the rules also reflects the
likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 233(1) to refer the reader to subclause 26(2) of the Bill, which will clarify that an export permit for a kind of prescribed goods is taken to have been revoked if a temporary prohibition determination applies to the prescribed goods.

If the Secretary decides to revoke an export permit, subclause 233(2) will provide that the revocation will take place immediately after the decision to revoke the export permit is made. It will also create an obligation on the Secretary to give the export permit holder a written notice stating:

- that the export permit has been revoked; and
- the reasons for the revocation.

A decision made under clause 233 to revoke an export permit will not be a reviewable decision due to the broad implications for Australia’s export industry. Decisions regarding export permits represent the final permission for prescribed goods to be exported once all other requirements and conditions have been met. Whether an export permit continues to meet all those requirements and conditions will therefore determine whether an export permit should be revoked. As a result, if an export permit is revoked, it is because those requirements or conditions are no longer being met. Not revoking an export permit in such circumstances could undermine international confidence in Australia’s ability to effectively regulate the export of goods.

PART 4—OTHER MATTERS

Clause 234 Secretary may require assessment of goods

Subclause 234(1) is an application provision. It will provide that clause 234 will only apply if an export permit for a kind of prescribed goods is in force.

Subclause 234(2) will set out when the Secretary may require an assessment of goods to be carried out under Part 2 of Chapter 9 of the Bill. An assessment of goods may be required in relation to an export permit that is in force if the Secretary reasonably believes that:

- the integrity of the prescribed goods cannot be ensured;
- a condition of the export permit has been, or is likely to be, contravened;
- the requirements of the Bill have not been complied with, or are not likely to be complied with before the prescribed goods are imported into the importing country;
- an importing country requirement relating to the prescribed goods will not be, or is not likely to be, met before the prescribed goods are imported into the importing country;
- circumstances prescribed by the rules exist.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances in which the Secretary may require an assessment of goods, for which an export permit is in force, provides the Secretary with the flexibility to determine when it will be appropriate to conduct an assessment in circumstances that are not otherwise listed in subclause 234(2). This may include, for example, an assessment that is required following an application for an export permit. Such assessments may also be specific to a kind of prescribed goods. It also reflects
the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 234(2) that will provide an example of when an assessment of goods may be required. It clarifies that the Secretary may require an assessment of goods if, for example, the integrity of prescribed goods that are intended for human consumption may not be able to be ensured if the prescribed goods are likely to deteriorate before they arrive at their intended destination.

**Clause 235 Additional or corrected information in relation to application for export permit etc.**

Clause 235 will set out the circumstances in which the holder of an export permit must provide the Secretary with additional or corrected information in relation to the export permit. This clause mirrors clause 240 of the Bill, which applies before an export permit has been issued.

Subclause 235(1) will require the holder of an export permit to give the Secretary additional or corrected information in accordance with subclause 235(2) if:

- the holder becomes aware that information included in an application made by the holder to which Part 5 of this Chapter applies, or information or a document given to the Secretary in relation to such an application, was incomplete or incorrect; or
- a change prescribed by the rules made under clause 432 of the Bill occurs.

However, subclause 235(2) only creates an obligation on the holder of an export permit to give the Secretary additional or corrected information required under subclause 235(1) to the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to the export of the prescribed goods for which the export permit was issued have been complied with, or will be complied with before the prescribed goods are imported into the importing country; or
- the importing country requirements relating to the prescribed goods for which the export permit was issued have been met, or will be met before the prescribed goods are imported into the importing country.

Subclause 235(2) will also require the person to give the Secretary additional or corrected information as soon as practicable, without delay. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis. Additional or corrected information that will not be relevant to that assessment will not need to be provided to the Secretary.

It is necessary for the Secretary to have the most up-to-date information to determine whether an export permit should remain in force. The provision of information may lead the Secretary to take certain action, such as suspension of an export permit. Enabling rules made under clause 432 of the Bill to prescribe a change (or changes) where the holder of an export permit is required to give the Secretary additional or corrected information will provide the Secretary with the flexibility to determine additional matters which are of importance that are not otherwise covered by paragraph 235(1)(a). The ability to prescribe these changes also reflects the likelihood that they will need to change from time to time and will need to commence at short notice.
Two notes will also be included at the end of subclause 235(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code* and clauses 367, 368 and 369 of the Bill). The sections specified in the *Criminal Code* and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information, documents or statements, which may lead to the issue of an export permit contrary to the requirements of the Bill.

Note 2 will provide that clause 235 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to a permit and if necessary, can take immediate action. Clause 426 of the Bill will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill, and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 235(3) will provide that a person is liable to a civil penalty of 60 penalty units if they are required to give the Secretary information under subclause 235(2) and they fail to do so. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the *Regulatory Powers Act* will apply.

This civil penalty provision is intended to provide an effective deterrent to conduct that will be inconsistent with the requirements to provide additional or corrected information when required to do so. It will be necessary for the Secretary to have relevant and correct information to determine whether an export permit authorising the export of prescribed goods should remain in force. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods and have economic consequences for Australia.

**Clause 236 Return of export permit**

Subclause 236(1) will provide that the rules may require an export permit holder to return the export permit to the Secretary:

- in the circumstances prescribed by the rules; and
- at the time, or within the period, prescribed by the rules.

The purpose of this provision is to ensure that an export permit is not used fraudulently to support the unauthorised export of prescribed goods. This subclause does not apply to export permits that were issued by a computer program as they may be revoked automatically electronically.
Enabling rules made under clause 432 of the Bill to prescribe the circumstances in which an export permit must be returned and the timeframe for doing so will provide the Secretary with flexibility to prescribe, for example, when an export permit must be returned for a particular kind of prescribed good. It also reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Subclause 236(2) will provide that a person is liable to a civil penalty if they are required to return an export permit in accordance with the rules and they fail to do so. The civil penalty prescribed by subclause 236(2) will be 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty is intended to provide an effective deterrent to conduct that will be inconsistent with the requirement to return an export permit. The return of an export permit, where there is a requirement to do so, is important to prevent fraudulent and unauthorised use of a permit. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods and have economic consequences for Australia.

Clause 237 Notification that goods not to be exported

Clause 237 will clarify that the rules may require the holder of an export permit to notify the Secretary in writing if it is intended that the prescribed goods to which the export permit relates will no longer be exported. This may be required in the circumstances prescribed by the rules and at the time, or within a period, prescribed by the rules.

Enabling rules made under clause 432 of the Bill to require the holder of an export permit to notify the Secretary that they no longer intend to export the prescribed goods is required so that the Secretary has sufficient information to decide whether to take further action. This may be required to ensure that an export permit is not used fraudulently to support the unauthorised export of prescribed goods. For example, the Secretary may revoke the export permit under clause 233 of the Bill. The rules will also provide the Secretary with the flexibility to, for example, prescribe a longer notification period for a kind of prescribed goods where appropriate.

A note will be included at the end of clause 237 to make it clear that, in addition to providing a notification under clause 237, the holder of an export permit may be required to return the export permit to the Secretary in accordance with clause 236.

PART 5—APPLICATIONS FOR EXPORT PERMITS

Clause 238 Applications to which this Part applies

Clause 238 will provide that Part 5 of Chapter 7 of the Bill will apply in relation to:

- an application under clause 224 of the Bill for an export permit, and
• an application under paragraph 229(3)(b) of the Bill to vary an export permit or conditions of an export permit.

Clause 239  Requirements for applications

Subclause 239(1) will prescribe the requirements for an application to which this Part applies. The application must:

• if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner;
• if the Secretary has approved a form for making the application—include the information required by the form and be accompanied by any documents required by the form;
• include the information (if any) prescribed by the rules; and
• be accompanied by any documents prescribed by the rules.

The manner of the application approved by the Secretary could, for example, include the ability to make an application electronically.

Enabling rules made under clause 432 of the Bill to prescribe any information or documents that must accompany an application for an export permit is intended to make sure that the Secretary has access to relevant information or documents not covered by the other paragraphs in this subclause. Such information or documents may be important to the Secretary’s decision of whether to issue an export permit and may be specific to a kind of prescribed good. The ability to prescribe these matters also reflects the likelihood that the requirements prescribed will change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 239(1) that will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents in an application for an export permit, which could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Subclause 239(2) will enable the Secretary to take into account any other information or document previously given to the Secretary in an application under the Bill as satisfying the requirements of subclause 239(1). For example, if the applicant has previously made an application to register an establishment and is now applying for an export permit, the Secretary may refer to information provided in relation to the application to register an establishment for the purpose of deciding the application for an export permit. This provision is intended to reduce the burden on applicants by removing the requirement to resubmit information.

Subclause 239(3) will ensure that applications that do not comply with subclause 239(1) (for example, incomplete or abandoned applications) are taken not to have been made. This is to avoid unnecessary administration and allocation of resources to applications that do not comply with the requirements set out in the Bill. This will mean, for example, that the Secretary will not be required to make a decision on the application if it is incomplete.
Subclause 239(4) is an avoidance of doubt provision. Paragraph 239(4)(a) will clarify that the Secretary will be able to approve different forms for applications relating to different kinds of prescribed goods. This is intended to account for circumstances where there is a difference in requirements between different kinds of prescribed goods that may need to be reflected in the application form. Paragraph 239(4)(b) will clarify that the Secretary will be able to approve a single form for more than one kind of application. This is intended to reduce duplication. This is made clear in the example set out under subclause 239(4), which clarifies that the Secretary may approve a single form to be used to apply for an export permit for a kind of prescribed goods and a government certificate in relation to the prescribed goods.

**Clause 240 — Additional or corrected information**

Clause 240 will set out the circumstances in which an applicant for an export permit, or variation of an export permit, must provide the Secretary with additional or corrected information. This clause mirrors clause 235 of the Bill, which applies after an export permit has been issued.

Subclause 240(1) will require a person who has made an application to provide additional or corrected information to the Secretary as soon as practicable if:

- the person becomes aware that the information provided in the application or information or a document given to Secretary in relation to the application was incomplete or incorrect; or
- a change prescribed in the rules occurs.

However, subclause 240(2) only creates an obligation on the person who makes an application under clause 238 to give the Secretary additional or corrected information required under subclause 240(1) to the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to the export of the prescribed goods for which the export permit was issued have been complied with, or will be complied with before the prescribed goods are imported into the importing country; or
- the importing country requirements relating to the prescribed goods for which the export permit was issued have been met, or will be met before the prescribed goods are imported into the importing country.

Subclause 240(2) will also require the person to give the Secretary additional or corrected information as soon as practicable. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis. Additional or corrected information that will not be relevant to that assessment will not need to be provided to the Secretary.

It is necessary for the Secretary to have the most up-to-date information to determine whether an export permit should be issued. Enabling the rules made under clause 432 of the Bill to prescribe a change (or changes) where a person who has applied for an export permit is required to give the Secretary additional or corrected information in relation to the application will allow the Secretary to determine additional matters which are of importance that are not otherwise covered by paragraph 240(1)(a). The ability to prescribe these circumstances also reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.
Two notes will also be included at the end of subclause 240(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents in an application for an export permit, which could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Note 2 will provide that clause 240 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to a permit and if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill, and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 240(3) will provide that a person will be liable to a civil penalty of 60 penalty units if they are required to give additional or corrected information to the Secretary under subclause 240(1) and they fail to do so. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to a person providing false and misleading information in an application for an export permit. It will be necessary for the Secretary to have relevant and correct information to determine whether an export permit authorising the export of prescribed goods should be issued. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods and have economic consequences for Australia.

Clause 241 Powers of Secretary in relation to applications

Clause 241 will set out the powers of the Secretary in considering applications made under Part 5 of Chapter 7 of the Bill.

Clause 241 will provide that the Secretary may do anything the Secretary considers necessary in relation to an application under Part 5 of the Bill, including the following:

- request, in writing, the applicant, or another person who the Secretary considers may have information or documents relevant to the application, to give the Secretary further specified information or documents relevant to the application;
- require an audit of export operations carried out in relation to the goods (the relevant goods) to which the application relates to be conducted under Part 1 of Chapter 9 of the Bill;
require an assessment of the relevant goods to be carried out under Part 2 of Chapter 9 of the Bill;

request the applicant to give the Secretary a written statement, signed and dated by the applicant, verifying that:

- the requirements of the Bill in relation to the export of the relevant goods have been complied with, or will be complied with before the relevant goods are imported into the importing country; and
- any importing country requirements relating to the relevant goods have been met, or will be met before the relevant goods are imported into the importing country;

- take, test, or analyse, any samples of the relevant goods or from equipment or other things relevant to the application;

- arrange for another person, with appropriate qualifications or expertise, to take, test, or analyse samples of the relevant goods or from equipment or other things relevant to the application; and

- any other thing prescribed by the rules.

Note 1 at the end of clause 241 will refer the reader to Division 2 of Part 6 of Chapter 11 in relation to the taking, testing and analysing of samples. Note 2 provides that these powers may only be exercised by the Secretary or an authorised officer or APS employee in the Department to whom the powers have been subdelegated under section 288.

The powers of the Secretary in considering an application are broad, including the ability to prescribe matters in the rules made under clause 432 of the Bill, as well as the discretion to do anything the Secretary considers necessary. The ability of the Secretary to do anything the Secretary considers necessary when dealing with an application for a permit, may include, for example, seeking consent to enter premises or to see a demonstration of export operations. That is, the indicative list of what the Secretary may do when dealing with an application as set out in clause 241 does not list all the things the Secretary may be able to do when dealing with an application and does not, for example, preclude the Secretary from doing similar things to what is set out in clause 379 (in relation to applications generally).

Enabling the rules made under clause 432 of the Bill to prescribe additional powers provides the Secretary with the flexibility to determine when it is appropriate to exercise powers not otherwise covered by paragraphs in this subclause. Enabling the Secretary to do anything the Secretary considers necessary ensures that the Secretary can take individual circumstances into account. The broad nature of this provision is intended to ensure that the Secretary has the ability to attain any information relevant to making a decision to issue or refuse to issue an export permit, and to vary or refuse to vary an export permit or condition of an export permit.

Chapter 8—Other matters relating to export

PART 1—NOTICES OF INTENTION TO EXPORT

Division 1—Introduction

Clause 242     Simplified outline of this Part

Clause 242 will provide a simplified outline of Part 1 of Chapter 8 of the Bill. Part 1 of Chapter 8 will provide for matters in relation to notices of intention to export a consignment of prescribed goods. A notice of intention to export may be required to be given in a manner
and form approved by the Secretary by a person who intends to export a consignment of prescribed goods from Australia. The information that will be required to be contained in a notice of intention to export, the person to whom the notice is to be given, and the time when it is required will be prescribed in the rules made under clause 432 of the Bill. The notice will be used to notify the Secretary that a person intends to, and is preparing to, export the prescribed goods, so that the consignment and any related documents can be assessed prior to an export permit being granted. The person who has given the notice must give the Secretary additional or corrected information in certain circumstances.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 1 of Chapter 8; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of the Bill to which the outline relates.

Division 2—Notices of intention to export

Clause 243 Notice of intention to export—general requirements

Clause 243 will set out the general requirements for a notice of intention to export a consignment of prescribed goods. A notice of intention will serve to inform the Secretary about a person’s intention to export prescribed goods, so that the prescribed goods, or documents relating to the prescribed goods, can be assessed prior to an export permit being granted under Chapter 7 of the Bill.

Subclause 243(1) will provide that a notice of intention must:

- if the Secretary has approved, in writing, a manner for giving the notice—be given in an approved manner; and
- if the Secretary has approved a form for the notice—include the information required by the form and be accompanied by any documents required by the form;
- include the information (if any) prescribed by the rules; and
- be accompanied by any documents prescribed by the rules; and
- be given by a person prescribed by the rules; and
- be given to the person prescribed by the rules; and
- be given at a time, or within the period, prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe these topics will provide the Secretary with the flexibility to determine the requirements of a notice according to particular situations or a particular kind of prescribed goods. This is appropriate as it may not be necessary to apply all of the same requirements to all kinds of prescribed goods.

Two notes will be included at the end of subclause 243(1). Note 1 will refer the reader to clause 29 of the Bill and the rules made for the purposes of clause 29 of the Bill. The note will clarify that the export of a kind of prescribed goods may be prohibited unless a notice of intention to export the prescribed goods is given. Clause 29 of the Bill will enable the rules to prohibit the export of prescribed goods unless conditions prescribed under the rules are complied with.

Note 2 will refer the reader to sections 137.1 and 137.2 of the Criminal Code and clauses 368 and 369 of the Bill. The note will clarify that a person may commit an offence or be liable to a civil penalty if the person knowingly provides false or misleading information or documents. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide
an effective deterrent to persons who provide false or misleading information or documents in relation to a notice of intention to export, which is inconsistent with the requirements of the Bill and could result in the export of prescribed goods that do not comply with requirements or conditions set out in the Bill.

Subclause 243(2) will enable the Secretary to accept any information or document previously given to the Secretary in connection with any application made under the Bill, or a notice of intention to export previously given under clause 243, as satisfying any requirement to provide that information or document under subclause 243(1). The purpose of this subclause is to ensure that an applicant does not need to provide the Secretary with the same information multiple times. This will reduce the administrative burden on both the applicant and the Secretary.

Subclause 243(3) will provide that a notice of intention to export prescribed goods will be taken not to have been given if the notice does not meet all the requirements of subclause 243(1). This is to avoid unnecessary administration and allocation of resources to a notice of intention of export that does not comply with the requirements set out in the Bill. This will mean, for example, that the Secretary will not be required to accept the notice if it is incomplete.

Subclause 243(4) will be an avoidance of doubt provision. It will clarify that the Secretary will be able to approve different forms for notices of intention to export different kinds of prescribed goods, or a single form for a notice of intention to export a consignment of prescribed goods and one or more applications under the Bill.

**Clause 244 Additional or corrected information**

Clause 244 will set out the circumstances in which a person who has given a notice of intention to export must provide the Secretary with additional or corrected information in relation to the notice.

Subclause 244(1) will require a person who has given a notice of intention to export to give the Secretary additional or corrected information in accordance with subclause 244(2) if:

- the person becomes aware that information included in the notice, or information or a document given to the Secretary in relation to the notice, was incomplete or incorrect; or
- a change prescribed by the rules occurs.

However, subclause 244(2) only creates an obligation on the person who has given a notice of intention to export to give the Secretary additional or corrected information required under subclause 244(1) to the extent that it is relevant to the Secretary assessing whether:

- the requirements of the Bill in relation to the export of the prescribed goods have been, are being, or will be complied with; or
- the importing country requirements relating to the prescribed goods have been, are being, or will be met.

Subclause 244(2) will also require the person to give the Secretary additional or corrected information as soon as practicable. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis. Additional or corrected information that will not be relevant to that assessment will not need to be provided to the Secretary.
It is necessary for the Secretary to have the most up-to-date information to determine whether prescribed goods are suitable to be exported in accordance with a notice of intention to export. The provision of information may lead the Secretary to take certain action, such as initiating an assessment of goods under Part 2 of Chapter 9 of the Bill. Enabling rules made under clause 432 of the Bill to prescribe a change (or changes) where the person who has given a notice of intention to export is required to give the Secretary additional or corrected information will provide the Secretary with the flexibility to determine additional matters which are of importance that are not otherwise covered by paragraph 244(1)(a). The ability to prescribe these changes also reflects the likelihood that they will need to change from time to time and will need to commence at short notice.

Two notes will be included at the end of subclause 244(2). Note 1 will refer the reader to sections 137.1 and 137.2 of the Criminal Code and clauses 368 and 369 of the Bill. The note will clarify that a person may commit an offence or be liable to a civil penalty if the person knowingly provides false or misleading information or documents. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents, which is inconsistent with the requirements of the Bill and could result in the export of prescribed goods that do not comply with requirements or conditions set out in the Bill.

Note 2 will provide that clause 244 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to a notice of intention to export and if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that prescribed goods are not exported where they do not comply with importing country requirements and requirements of the Bill and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 244(3) will provide that a person is liable to a civil penalty of 60 penalty units if they are required to give the Secretary information under subclause 244(2) and they fail to do so. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 244(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 244(1) will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to conduct that is inconsistent with the requirements of this clause. It will be necessary for the Secretary to have relevant and correct information at hand in relation to a consignment of prescribed goods intended for export. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.
PART 2—TRADE DESCRIPTIONS

Division 1—Introduction

Clause 245  Simplified outline of this Part

Clause 245 will provide a simplified outline of Part 2 of Chapter 8 of the Bill. Part 2 of Chapter 8 of the Bill will provide for matters in relation to trade descriptions. Part 2 creates a framework whereby the rules made under clause 432 of the Bill may make provision for and in relation to trade descriptions for prescribed goods that are intended to be exported. Part 2 will also include prohibitions on contraventions of the rules and provide a definition of the term false trade description.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 2 of Chapter 8 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of the Bill to which the outline relates.

Division 2—Trade descriptions for prescribed goods

Clause 246  Meaning of trade description

Clause 246 will provide for the meaning of the term *trade description* for goods, which, as provided in clause 12 of the Bill, will be defined to have the meaning given by subclauses 246(1) and 246(2).

Subclause 246(1) will provide that a trade description for goods will be a description or statement (whether in English or any other language), or a pictorial representation, indication or suggestion (direct or indirect) that describes the goods. A trade description for goods could cover any of the following matters:

- the nature, number, quantity, quality, purity, class, grade, breed, measure, gauge, size, mass, colour, strength, sex, variety, genus, species or age of the goods;
- the country or place where the goods were made, produced or grown;
- the exporter, manufacturer or producer of the goods;
- the person by whom the goods were selected or in any way prepared;
- the method, time or place of manufacturing, producing, selecting or otherwise preparing the goods;
- the time before which, or period within which, the goods are to be used;
- the batch, lot or other grouping in which the goods are included;
- the material or ingredients of which the goods are composed or from which they are derived;
- the goods being the subject of an existing patent or privilege.

Subclause 246(2) will also provide that a *trade description* for goods includes a mark that, according to the custom of the trade or common repute, will be commonly taken to be an indication of any of the matters referred to in subclause 246(1). A note will be included at the end of subclause 246(2) to refer the reader to the definition of *mark* in clause 12 of the Bill, which will provide that a mark will include a stamp, seal and label.

Trade descriptions ensure the identity of prescribed goods can be ascertained, and provide assurance of the integrity of prescribed goods to importing countries. The appropriate use of trade marks will be necessary to achieve the objects of the Bill, as set out in clause 3 of
the Bill. Accordingly, the Bill will prescribe criminal offences and civil penalties in clauses 249, 250, 252 and 253 of the Bill in relation to conduct that contravenes Part 2 of Chapter 8 of the Bill.

Clause 247 When a trade description is applied to goods

The concept of when a trade description will be applied to goods is fundamental to managing conduct in relation to that trade description.

Accordingly, clause 247 will provide that a trade description is applied to goods if the trade description is:

- applied directly to the goods, their packaging or anything containing the goods; or
- applied to anything attached to the goods, their packaging or anything containing the goods; or
- inserted into anything in which the goods are packaged or anything containing the goods; or
- applied to, or stated in, any document relating to the goods; or
- applied to any covering, label, reel or other thing used in connection with the goods; or
- applied in any other way prescribed by the rules; or
- applied in any other way likely to lead to the belief that it describes or designates the goods.

Enabling rules made under clause 432 of the Bill to prescribe alternative means of applying a trade description will provide the Secretary with the flexibility to determine additional methods of application that are necessary or appropriate that are not otherwise described in clause 247. Prescribing alternative means of applying a trade description in the rules may be necessary or appropriate where, for example, importing country requirements change.

Clause 248 Rules may make provision in relation to trade descriptions

Clause 248 will ensure that trade descriptions for prescribed goods include relevant information and are used in a way that will ensure that the identity of prescribed goods can be ascertained and that they are not confused with any other goods.

Subclause 248(1) will provide that the rules made under clause 432 of the Bill may make provision for and in relation to trade descriptions for prescribed goods that are intended to be exported.

Subclause 248(2) will provide examples of what rules made for the purpose of subclause 248(1) may address. The rules may:

- require a trade description to be applied to prescribed goods that are intended to be exported; and
- make provision for and in relation to:
  - the content of trade descriptions;
  - the accuracy and legibility of trade descriptions;
  - the methods for applying trade descriptions;
  - trade descriptions that are in a language other than English;
  - the use of additional information or pictures with trade descriptions.
Enabling rules made under clause 432 of the Bill to prescribe matters for and in relation to trade descriptions will provide the Secretary with the flexibility to deal with the requirements of trade descriptions and will enable a timely response to changing market requirements. It will also enable the requirements for trade descriptions for prescribed goods to be clearly specified and updated when necessary for the purpose of one or more of the objects of the Bill.

**Clause 249 Conduct that contravenes rules**

Clause 249 will provide that penalties may be imposed in circumstances where a person engages in conduct that contravenes a rule made for the purpose of clause 248 of the Bill in relation to trade descriptions.

Subclause 249(1) will provide that a person contravenes subclause 249(1) if:

- the person engages in conduct; and
- the conduct contravenes a rule made for the purposes of clause 248 of the Bill.

For example, if a rule made for the purposes of clause 248 of the Bill requires a trade description for a particular type of prescribed good to be applied in a certain way, and the trade description is not applied in that way, the person who engaged in the contravening conduct may commit an offence or be liable to a civil penalty.

A note will be included at the end of subclause 249(1) that will provide that the physical elements of an offence against subclause 249(2) will be set out in subclause 249(1) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 249(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 249(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 249(1) will be 1,500 penalty units.

Subclause 249(3) will provide that a person will be liable to a civil penalty of 600 penalty units if the person contravenes subclause 249(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 249(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 249(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 249(3) will be twice as high as the penalty available for the criminal offence. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct that contravenes rules relating to the use of trade descriptions. Conduct that contravenes the requirements that will be set out in rules may be inconsistent with the objects of the Bill insofar as the trade description may not be accurate for the
prescribed good that is being exported. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 250  Alteration of or interference with trade description**

Clause 250 will set out the circumstances in which a person, other than an authorised officer, will be able to alter or interfere with a trade description, either before or after an export permit has been issued. This clause will ensure there will be appropriate oversight of alterations and interferences so that the identity of prescribed goods can be ascertained and the prescribed goods are not confused with any other goods.

*Alterations or interferences before export permit issued*

Subclause 250(1) will deal with alterations or interferences made to a trade description before an export permit is issued. It will provide that a person, other than an authorised officer, must not alter or interfere with a trade description applied to prescribed goods that are intended to be exported and for which an export permit has not been issued. This will be an important safeguard to ensure that trade descriptions are true and correct at all times.

However, subclause 250(1) will clarify that a person may make such an alteration or interference if it will be done in accordance with:

- a direction given to the person by an authorised officer; or
- an approved arrangement covering the prescribed goods (see Chapter 5 of the Bill); or
- a written approval given to the person by the Secretary.

An alteration or interference with a trade description will include any addition, removal, defacement or other alteration or interference with that description.

A note will be included at the end of subclause 250(1) that will clarify that, if a trade description applied to prescribed goods is altered or interfered with other than in accordance with subclause 250(1), the Secretary may refuse to issue an export permit for the prescribed goods under clause 225 of the Bill. Refusal by the Secretary to issue an export permit will mean that the prescribed goods are prohibited from export. This is intended to deter people from engaging in conduct that is otherwise than in accordance with subclause 250(1).

*Alterations or interferences after export permit issued*

Subclause 250(2) will deal with alterations or interferences made to a trade description after an export permit is issued. It will provide that a person, other than an authorised officer, will contravene subclause 250(2) if the person alters or interferes with a trade description applied to prescribed goods intended for export, after an export permit has been issued but before the prescribed goods have been exported.
However, paragraph 250(2)(e) will clarify that a person may make such an alteration or interference if it is authorised by:

- a direction given to the person by an authorised officer;
- an approved arrangement covering the prescribed goods (see Chapter 5 of the Bill);
- a written approval given to the person by the Secretary.

Only in exceptional circumstances should it be necessary to alter a trade description after an export permit has been issued. However, the power will be required to take into account any issues that arise, including minor typographical errors that necessitate an alteration.

A note will be included at the end of subclause 250(2), which will clarify that the physical elements of an offence against subclause 250(3) will be set out in subclause 250(2) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 250(3) will provide that a person will commit a fault-based offence if the person contravenes subclause 250(2). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The corresponding criminal penalty for a body corporate for a contravention of subclause 250(2) will be 600 penalty units.

Subclause 250(4) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 250(2). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 250(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 250(2) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 250(4) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct involving an alteration or interference with a trade description after an export permit has been issued. Conduct that contravenes the requirements that will be set out in this clause may be inconsistent with the objects of the Bill insofar as the trade description may not be accurate for the prescribed goods that are being exported. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.
Division 3—False trade descriptions for prescribed goods

Clause 251    Meaning of false trade description

Clause 251 will provide for the meaning of the term false trade description, which will be defined by clause 12 of the Bill to have the meaning given by clause 251.

Clause 251 will provide that a trade description (which will be defined in clause 246 of the Bill) will be a false trade description if the description is false or likely to mislead in a material respect due to:

- anything contained in, or omitted from, the description; or
- any alteration of, or interference with, the description (whether by way of addition, removal, defacement or otherwise).

A false trade description will be one that is not a true trade description for the prescribed goods. This may be because it says something that is wrong or because it omits something from the description. Whether a trade description will be false or likely to mislead in a material respect will be determined on a case-by-case basis.

Clause 252    False trade description must not be applied to prescribed goods

Clause 252 will provide that penalties may be imposed in circumstances where a person knowingly or recklessly applies a false trade description to prescribed goods with the intention to export those prescribed goods. The application of a false trade description may compromise the integrity of prescribed goods in that their identity or composition will not be ascertainable or they may be confused with other goods. Applying a false trade description may cause serious damage to Australia’s export reputation.

Person must not knowingly apply a false trade description

Subclause 252(1) will provide that a person will contravene subclause 252(1) if:
- the person applies a trade description to prescribed goods; and
- the prescribed goods are intended to be exported; and
- the trade description is false; and
- the person knows that the trade description is false.

A note will be included at the end of subclause 252(1) that will provide that the physical elements of an offence against subclause 252(2) will be set out in subclause 252(1) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 252(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 252(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 252(2) will be 1,500 penalty units.

Subclause 252(3) will provide that strict liability will apply to the element of the offence in paragraph 252(1)(b) (that the goods are prescribed goods). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 252(1)(b) beyond reasonable doubt, and will not be required to prove fault for this element. The defence
of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the
Criminal Code).

The element of the offence in paragraph 252(1)(b) is a matter of law. It concerns how goods
for export are regulated. It is appropriate for this element to be strict liability because persons
engaged in the export of goods, including those who apply trade descriptions to goods, should
know their legal obligations before commencing export operations. If the prosecution was
required to prove fault in relation to this element, it would undermine deterrence by requiring
proof that persons who apply trade descriptions to goods for export knew the law. Making this
element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that
ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 252(1)(b) will not affect the need for the prosecution to
prove fault elements for other parts of the offence, namely that the person intended to apply a
trade description to goods (paragraph 252(1)(a)), that the person was reckless as to whether
the goods were intended to be exported (paragraph 252(1)(c)), and that the person knew that
the trade description was a false trade description for those goods (paragraphs 252(1)(d) and
(e)) or was reckless as to whether the trade description was a false trade description for those
goods (paragraph 252(5)(d)).

Subclause 252(4) will provide that a person will be liable to a civil penalty of 600 penalty
units if the person contravenes subclause 252(1). This will be the maximum civil penalty that
a relevant court will be able to order an individual to pay the Commonwealth for a
contravention of subclause 252(1). The maximum civil penalty that a relevant court will be
able to order a body corporate to pay the Commonwealth for a contravention of
subclause 252(1) will be 3,000 penalty units, as the corporate multiplier provision in
subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 252(4) will be twice as high as the penalty
available for the criminal offence. This will ensure the civil penalty acts as a deterrent,
particularly for corporations, and recognises that being found liable to pay a civil penalty does
not attract imprisonment or a criminal conviction.

**Person must not recklessly apply a false trade description**

Subclauses 252(5), 252(6), 252(7) and 252(8) will provide that penalties may be imposed in
circumstances where a person recklessly applies a false trade description to prescribed goods
that are intended to be exported.

Subclause 252(5) will provide that a person will contravene subclause 252(5) if:

- the person applies a trade description to prescribed goods; and
- the prescribed goods are intended to be exported; and
- the trade description is a false trade description for the goods.

The only difference between subclauses 252(5) and 252(1) will be that, under
subclause 252(1) the person will know that the trade description is a false trade description,
whereas under subclause 252(5) they will be reckless as to that circumstance.

A note will be included at the end of subclause 252(5), which will provide that the physical
elements of an offence against subclause 252(6) will be set out in subclause 252(5). The note
will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 252(6) will provide that a person will commit a fault-based offence if the person contravenes subclause 252(5) of the Bill. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 252(5) will be 600 penalty units.

Subclause 252(7) will provide that strict liability will apply to the element of the offence in paragraph 252(5)(b) (that the goods are prescribed goods). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 252(5)(b) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 252(5)(b) is a matter of law. It concerns how goods for export are regulated. It is appropriate for this element to be strict liability because persons engaged in the export of goods, including those who apply trade descriptions to goods, should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons who apply trade descriptions to goods for export knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 252(5)(b) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to apply a trade description to goods (paragraph 252(5)(a)), that the person was reckless as to whether the goods were intended to be exported (paragraph 252(5)(c)), and that the person was reckless as to whether the trade description was a false trade description for those goods (paragraph 252(5)(d)).

Subclause 252(8) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 252(5). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 252(5). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 252(5) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 252(8) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The rationale for penalising conduct that contravenes subclauses 252(1) and 252(5) will be the same, but conduct that contravenes subclause 252(5) will be considered less serious than conduct that contravenes subclause 252(1) because it will not have the knowledge requirement that will be set out in paragraph 252(1)(e), only recklessness. This will be reflected in the difference in the level of the penalties between subclauses 252(1) and 252(5). The penalties are higher in subclauses 252(2) and 252(3) (in relation to the conduct that
contravenes subclause 252(1)) than the penalties in subclauses 252(6) and 252(8) (in relation to conduct that contravenes subclause 252(5)).

The penalties for both the fault-based offences and the civil penalty provisions reflect the seriousness of a person recklessly or knowingly applying a false trade description to prescribed goods with the intention to export those prescribed goods. Conduct that contravenes this clause may be inconsistent with the objects of the Bill insofar as the trade description may not be accurate for the prescribed goods that are being exported. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 253   Goods with false trade description must not be exported etc.

Clause 253 will provide that penalties may be imposed in circumstances where prescribed goods with false trade descriptions are exported.

Subclause 253(1) will provide that a person will contravene subclause 253(1) if:

- the person enters prescribed goods for export, puts prescribed goods on an aircraft or vessel for export, brings prescribed goods to any landing place, port or other place for the purpose of being exported, or exports prescribed goods; and
- the prescribed goods have a trade description applied to them (see clauses 246 and 247 of the Bill); and
- the trade description is a false trade description for the goods (see clause 251 of the Bill).

A note will be included at the end of subclause 253(1) that will provide that the physical elements of an offence against subclause 253(2) will be set out in subclause 253(1) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 253(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 253(1) of the Bill. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 253(2) will be 600 penalty units.

Subclause 253(3) will provide that strict liability will apply to the element of the offence in paragraph 253(1)(b) (that the goods are prescribed goods). The effect of this is that the prosecution will only be required to prove the physical element in paragraph 253(1)(b) beyond reasonable doubt, and will not be required to prove fault for this element. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The element of the offence in paragraph 253(1)(b) is a matter of law. It concerns how goods for export are regulated. It is appropriate for this element to be strict liability because persons...
engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to this element, it would undermine deterrence by requiring proof that persons apply trade descriptions to goods for export knew the law. Making this element strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

The use of strict liability in paragraph 253(1)(b) will not affect the need for the prosecution to prove fault elements for other parts of the offence, namely that the person intended to enter the goods for export, put the goods on an aircraft or vessel for export, bring the goods to a place like a landing place or port for the purpose of being exported, or exports the goods (paragraph 253(1)(a)), that the person was reckless as to whether the goods have a trade description applied to them (paragraph 253(1)(c)), and that the person was reckless as to whether the trade description was a false trade description for those goods (paragraph 253(1)(d)).

Subclause 253(4) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 253(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 253(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 253(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 253(4) will be twice as high as the penalty available for the criminal offences. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of exporting prescribed goods to which a false trade description has been applied. Conduct that contravenes the requirements that will be set out in this clause may be inconsistent with the objects of the Bill insofar as the trade description may not be accurate for the prescribed goods that are being exported. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

PART 3—OFFICIAL MARKS

Division 1—Introduction

Clause 254 Simplified outline of this Part

Clause 254 will provide for a simplified outline of Part 3 of Chapter 8 of the Bill. Part 3 of Chapter 8 will provide for matters in relation to official marks. These will include:
• rule making powers dealing with marks that are to be official marks for the purposes of the Bill, and other matters relating to official marks;
• resemblances of official marks and other matters relating to resemblances; and
• official marking devices.

Part 3 of Chapter 8 will also provide that a person must not engage in conduct that contravenes rules made under clause 432 of the Bill for the purposes of this Part.

In addition, the Part will provide that a false, misleading or deceptive official mark must not be applied to goods that are intended to be exported, or to a document that relates to goods that are intended to be exported or to trade with another country. Finally, an official mark that is applied to goods that are intended to be exported, or to a document that relates to goods that are intended to be exported or to trade with another country, must not be altered so as to be misleading or deceptive.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 3 of Chapter 8 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of the Bill to which the outline relates.

Division 2—Rule-making powers

Clause 255 Official marks

Subclause 255(1) will provide that the rules made under clause 432 of the Bill may provide that a specified mark will be an official mark for the purposes of the Bill. The term official mark will be defined in clause 12 of the Bill as a mark that will be an official mark for the purposes of the Bill under rules made for the purposes of subclause 255(1).

For example, the rules could specify that a mark for a particular kind of meat product, or a seal to be used on a government certificate, will be an official mark for the purposes of the Bill.

Two notes will be included at the end of subclause 255(1). Note 1 will refer the reader to the definition of mark in clause 12 of the Bill, which will provide that a mark includes a stamp, seal or label. This note will ensure that the distinction between a mark and an official mark will be clear.

Note 2 will refer the reader to clause 29 of the Bill and the rules made for the purposes of clause 29, and will clarify that the export of a kind of prescribed goods may be prohibited unless an official mark is applied to the goods. Clause 29 of the Bill will enable the rules to prohibit the export of prescribed goods unless conditions prescribed under the rules are complied with.

Subclause 255(2) will provide that the rules made under clause 432 of the Bill may also make provision for and in relation to a range of matters related to:

• the persons, or classes of persons, who may manufacture, possess, apply, alter or interfere with an official mark;
• the methods for applying official marks;
• the circumstances in which an official mark may, or must not, be applied;
• security of official marks;
• removal or defacement of official marks;
• making records in relation to official marks;
• any other matter relating to official marks.

Enabling rules made under clause 432 of the Bill to prescribe matters for and in relation to official marks will provide the Secretary with the flexibility to respond to changes in governmental branding, specifications and other requirements as needed, and will provide for exceptions and additional requirements for particular commodities where appropriate.

Prescribing these matters in the rules will also mean that, where appropriate, aspects of the application, manufacture and security of official marks will be regulated. This is necessary to ensure that official marks can be relied upon by the governments of importing countries as an assurance from the Government about the authenticity of a document or the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

**Clause 256  Marks resembling official marks**

Subclause 256(1) will provide that the rules made under clause 432 of the Bill may make provision for marks that resemble an official marks or are apparently intended to resemble or pass for an official mark (*resemblances*).

Subclause 256(2) will provide examples of what the rules made for the purposes of subclause 256(1) may cover. The rules may make provision for and in relation to the following, relating to resemblances:

• the circumstances in which a mark resembles an official mark;
• the persons, or classes of persons, who may apply a resemblance;
• the methods for applying resemblances;
• the circumstances in which a resemblance may, or must not, be applied.

Enabling rules made under clause 432 of the Bill to prescribe matters for and in relation to marks resembling official marks will provide the Secretary with the flexibility to determine the aspects of the application and manufacture of marks resembling official marks that need to be regulated. This may be specific to, for example, a kind of good or place of export.

Rules made under this clause may, for example, set out the circumstances in which a mark that resembles an official mark will be legitimate and necessary, and may be relied upon by the governments of importing countries as an assurance of the authenticity of a document, or the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

**Clause 257  Official marking devices**

*Meaning of official marking device*

Subclause 257(1) will provide for the meaning of the term *official marking device*, which will be defined in clause 12 of the Bill to have the meaning given by subclause 257(1).

Subclause 257(1) will provide that an official marking device will be a device that is capable of being used to apply an official mark, but does not include any device prescribed by the rules. Enabling the rules made under clause 432 of the Bill to prescribe devices that are not official marking devices means that only those devices that are not considered suitable for that
applying official marks need to be prescribed. This will mean that the use of any other official marking device, not prescribed in the rules, will be permitted.

**Rules may make provision in relation to official marking devices**

Subclause 257(2) will provide that the rules may make provision for and in relation to the following, relating to official marking devices:

- the persons, or classes of persons, who may manufacture or possess an official marking device;
- the use of official marking devices;
- security of official marking devices;
- damaged official marking devices;
- destruction of official marking devices;
- making records in relation to official marking devices;
- any other matter relating to official marking devices.

Enabling the rules made under clause 432 of the Bill to prescribe matters relating to official marking devices will provide the Secretary with the flexibility to determine the matters related to the manufacture, use, security and destruction of official marking devices that need to be regulated. This may be specific to, for example, a kind of good or place of export. This will be necessary so that official marks can be relied upon by the governments of importing countries as an assurance of the authenticity of a document, or the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

**Division 3—Offences and civil penalty provisions**

**Clause 258 Conduct that contravenes rules**

Subclause 258 will provide that penalties may be imposed in circumstances where a person engages in conduct that contravenes the rules made under clause 432 of the Bill for the purposes of Division 2 of the Bill (see clauses 255 (official marks), 256 (marks resembling official marks) and 257 (official marking devices) of the Bill). The law regarding official marks, marks resembling official marks and official marking devices is highly detailed and technical and will relate to commodity specific requirements. For example, the rules may prescribe detailed methods for the application of an official mark, which is specific to a particular kind of goods, and tolerances for dimensions of official marks.

Subclause 258(1) will provide that a person will contravene subclause 258(1) if:

- the person engages in conduct; and
- that conduct contravenes a rule made for the purpose of a provision in Division 2 of Part 3 of Chapter 8 of the Bill.

A note will be included at the end of subclause 258(1) that will provide that the physical elements of an offence against subclause 258(2) will be set out in subclause 258(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 258(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 258(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The
maximum fine for a body corporate for a contravention of subclause 258(1) of the Bill will be 1,500 penalty units.

Subclause 258(3) will provide that a person will be liable to a civil penalty of 600 penalty units if the person contravenes subclause 258(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 258(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 258(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 258(3) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct that contravenes rules relating to the use of official marks. Conduct that contravenes the requirements that will be set out in rules may be inconsistent with the objects of the Bill insofar as the integrity of the good being exported may be compromised. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 259 Applying a false, misleading or deceptive official mark to goods**

Clause 259 will provide that penalties may be imposed in circumstances where a person applies a false, misleading or deceptive official mark to goods. Providing for a penalty in these circumstances will be necessary so that official marks can be relied upon by the governments of importing countries as an assurance from the Government about the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

Clause 260 of the Bill will provide for comparable penalties in relation to the application of a false, misleading or deceptive official mark to a document.

Subclause 259(1) will provide that a person will contravene subclause 259(1) if:

- the person applies an official mark to goods; and
- the goods are intended to be exported; and
- the official mark is false, misleading or deceptive.

A note will be included at the end of subclause 259(1), which will provide that the physical elements of an offence against subclause 259(2) will be set out in subclause 259(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.
Subclause 259(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 259(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 259(1) will be 1,500 penalty units.

Subclause 259(3) will provide that a person will be liable to a civil penalty of 600 penalty units if the person contravenes subclause 259(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 259(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 259(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 259(3) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct involving the application of a false, misleading or deceptive official mark to goods. Conduct that contravenes the requirements that will be set out this clause may be inconsistent with the objects of the Bill insofar as the integrity of the good being exported may be compromised. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 260 Applying a false, misleading or deceptive official mark to a document**

Clause 260 will provide that penalties may be imposed in circumstances where a person applies a false, misleading or deceptive official mark to a document. Providing for a penalty in these circumstances will be necessary so that official marks may be relied upon by the governments of importing countries as an assurance from the Government about the authenticity of a document, including that the document meets regulatory requirements. Clause 259 of the Bill will provide for comparable penalties in relation to the application of a false, misleading or deceptive official mark to goods.

Subclause 260(1) will provide that a person will contravene subclause 260(1) if:

- the person applies an official mark to a document; and
- the document relates to:
  - goods that are intended to be exported; or
  - trade with another country; and
- the official mark is false, misleading or deceptive.
A note will be included at the end of subclause 260(1) that will provide that the physical elements of an offence against subclause 260(2) will be set out in subclause 260(1) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 260(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 260(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 260(1) will be 1,500 penalty units.

Subclause 260(3) will provide that a person will be liable to a civil penalty of 600 penalty units if the person contravenes subclause 260(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 260(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 260(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 260(3) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct involving the application of a false, misleading or deceptive official mark to a document. Conduct that contravenes the requirements that will be set out this clause may be inconsistent with the objects of the Bill insofar as the integrity of the good being exported (to which the document relates) may be compromised. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 261 Conduct that results in official mark applied to goods being altered to be false, misleading or deceptive

Clause 261 will provide that penalties may be imposed in circumstances where a person engages in conduct that results in an official mark applied to a good being altered to be false, misleading or deceptive. Providing for a penalty in these circumstances will be necessary so that official marks can be relied upon by the governments of importing countries as an assurance from the Government about the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

Clause 262 of the Bill will provide for comparable penalties where a person engages in conduct that results in an official mark applied to a document being altered to be misleading or deceptive.
Subclause 261(1) will provide that a person will contravene subclause 261(1) if:

- the person engages in conduct that results in an official mark that is applied to goods being altered so as to be false, misleading or deceptive; and
- the goods are intended to be exported.

A note will be included at the end of subclause 261(1), which will provide that the physical elements of an offence against subclause 261(2) will be set out in subclause 261(1) of the Bill. The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 261(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 261(1). The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 261(1) will be 1,500 penalty units.

Subclause 261(3) will provide that a person will be liable to a civil penalty of 600 penalty units if the person contravenes subclause 261(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 261(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 261(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 261(3) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct that results in an official mark that is applied to goods being altered so as to be false, misleading or deceptive. Conduct that contravenes the requirements that will be set out in this clause may be inconsistent with the objects of the Bill insofar as the integrity of the good being exported may be compromised. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 262 Conduct that results in official mark applied to a document being altered to be false, misleading or deceptive**

Clause 262 will provide that penalties can be imposed in circumstances where a person engages in conduct that results in an official mark applied to a document being altered to be false, misleading or deceptive. Providing for a penalty in these circumstances will be necessary so that official marks can be relied upon by the governments of importing countries.
as an assurance from the Government about the authenticity of a document, including that the document meets regulatory requirements.

Clause 261 of the Bill will provide for comparable penalties where a person engages in conduct that results in an official mark applied to a good being altered to be misleading or deceptive.

Subclause 262(1) will provide that a person will contravene subclause 262(1) if:

- the person engages in conduct that results in an official mark that is applied to a document being altered so as to be false, misleading or deceptive; and
- the document relates to:
  - goods that are intended to be exported; or
  - trade with another country.

A note will be included at the end of subclause 262(1), which will provide that the physical elements of an offence against subclause 262(2) will be set out in subclause 262(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 262(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 262(1) of the Bill. The fault-based offence will be subject to a penalty of imprisonment for five years or a fine of 300 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 262(1) will be 1,500 penalty units.

Subclause 262(3) will provide that a person will be liable to a civil penalty of 600 penalty units if the person contravenes subclause 262(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 262(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 262(1) will be 3,000 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 262(3) will be twice as high as the penalty available for the criminal offence. This will ensure the civil penalty acts as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of any conduct that results in an official mark that is applied to a document being altered so as to be false, misleading or deceptive. Conduct that contravenes the requirements that will be set out in this clause may be inconsistent with the objects of the Bill insofar as the integrity of the good being exported may be compromised. Such conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.
PART 4—TARIFF RATE QUOTAS

Division 1—Introduction

Clause 263   Simplified outline of this Part

Clause 263 will provide for a simplified outline of Part 4 of Chapter 8 of the Bill. Part 4 of Chapter 8 of the Bill will provide for matters in relation to the establishment and administration of tariff rate quota systems for the export of goods. The Part will also provide that the Secretary may give written directions to be complied with by a particular person or body in relation to a matter covered by rules made for the purposes of Part 4 of Chapter 8 of the Bill.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 4 of Chapter 8 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of the Bill to which the outline relates.

Division 2—Tariff rate quota systems

Clause 264   Tariff rate quota systems

Subclause 264(1) will provide that the rules made under clause 432 of the Bill may provide for and in relation to the establishment and administration of a system, or systems, of tariff rate quotas for the export of goods.

Subclause 264(2) will provide examples of what will be able to be prescribed in the rules for the purposes of subclause 264(1). The rules may:

- determining the amount of tariff rate quota for the export of goods for a period;
- methods for determining tariff rate quota entitlements for the export of goods;
- establishing and maintaining a register of tariff rate quota entitlements;
- surrender, transfer, variation, and revocation of tariff rate quota entitlements;
- tariff rate quota certificates, including revocation of certificates;
- imposing conditions, including variation and revocation of conditions;
- auditing and reporting requirements.

Enabling the rules made under clause 432 of the Bill to prescribe matters relating to the establishment and administration of a tariff rate quota system or systems will provide the Secretary with the flexibility to ensure the systems can accommodate any tariff rate quota-related agreements negotiated between the Government and Australia’s international trading partners.

The amount of tariff rate quotas, for example, will be able to allow for periodic increases or decreases in quota and will provide the option to limit the availability of the amount to a defined period (for example, a quarter). Methods for determining tariff rate quota entitlements will allow for market-specific systems that may differ across commodities. Having a register of tariff rate quota entitlements will allow exporters to have access to information in respect of their quota entitlements, and certain elements of the register could be made available to all exporters to facilitate trading in quota entitlements. Allowing for the surrender, transfer, variation, and cancellation of tariff rate quota entitlements will provide necessary flexibility to manage quotas.
Tariff rate quota certificates will be able to be issued in respect of an export consignment to facilitate the consignment’s entry under the relevant concessional tariff rate applicable to the quota. It is important to note that tariff rate quota certificates will be excluded from the definition of government certificates in clause 12 of the Bill. Conditions could be imposed in relation to quota entitlements, the use of quota entitlements, or quota certificates. The generic reference to conditions is intended to cover all these types of conditions but ensures that applicable conditions will not be unintentionally limited. Finally, providing for auditing and reporting requirements will enable exporters to be audited and to be required to report on their usage of quota to enable a transparent and accountable quota management system.

Subclause 264(3) will enable the Secretary to give written directions to a particular person or body that must be complied with in relation to a matter covered by rules made for the purposes of subclause 264(1). A note will be included at the end of subclause 264(3), directing the reader to clause 309 of the Bill, which will provide general provisions relating to directions.

However, subclause 264(4) will provide that if a direction given under subclause 264(3) is inconsistent with rules made for the purposes of subclause 264(1), the direction prevails and the rules, to the extent of the inconsistency, will not have any effect. It is appropriate that a direction given by the Secretary under subclause 264(3) will prevail over the rules, as provided for by subclause 264(4). This will give the Secretary the flexibility to deal with complex situations relating to an individual exporter in a fair and transparent way that is also binding on the exporter.

Chapter 9—Powers and officials

PART 1—AUDITS

Division 1—Introduction

Clause 265 Simplified outline of this Part

Clause 265 will provide a simplified outline of Part 1 of Chapter 9 of the Bill, which will provide for matters in relation to audits. These include provisions that will enable the Secretary to require an audit of export operations or an audit of the performance of functions and exercise of powers by certain persons under the Bill. It will also provide that an audit may be conducted by an authorised officer, an approved auditor or a person specified in a class of persons prescribed by the rules, set out the powers that will be able to be exercised for the purpose of conducting an audit, and provide that a single audit or a program of audits may be required. Part 1 of Chapter 9 of the Bill will also provide that notice of an audit will not be required to be given. However, an auditor will be required to comply with the requirements provided by this Part or the rules in relation to the conduct of an audit. Part 1 of Chapter 9 of the Bill will also provide that an approved auditor will be able to charge a fee in relation to things done in the performance of the approved auditor’s functions or the exercise of the approved auditor’s powers under the Bill.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 1 of Chapter 9 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
Division 1—General

Clause 266  Audits of export operations

Clause 266 will set out the export operations that may be audited and the matters to which an audit of export operations must relate. Audits will play an important role in maintaining the integrity of Australia’s export system by ensuring that an effective oversight regime, with clear and transparent objectives, is in place. For example, an audit may be conducted to ensure that export operations are being carried out in compliance with the Bill and importing country requirements. This may include ensuring compliance with the conditions of an accreditation, approved arrangement, registration or licence, where relevant. A failed audit may lead to a requirement for corrective action or additional audits, or in more serious cases, suspension or revocation of the particular regulatory tool. It may also lead to the initiation of monitoring and investigation under Chapter 10 of the Bill, which may lead to civil penalties and criminal sanctions.

Export operations in relation to which audit may be required

Subclause 266(1) will set out the kinds of export operations that may be audited. The Secretary may require an audit of any of the following:

- export operations carried out at an accredited property or covered by the accreditation of the property;
- export operations carried out at a registered establishment or covered by the registration of the establishment;
- export operations covered by an approved arrangement;
- export operations covered by an export licence;
- export operations carried out in relation to a kind of prescribed goods by:
  o a person who has applied for an export permit in relation to the goods; or
  o a person to whom an export permit for the goods has been issued (whether or not the permit has been suspended or revoked);
- export operations carried out in relation to a kind of goods by:
  o a person who has applied for a government certificate or a tariff rate quota certificate in relation to the goods; or
  o a person to whom a government certificate or a tariff rate quota certificate in relation to the goods has been issued (whether or not the certificate has been revoked);
- export operations carried out in any other circumstances prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe any other export operations that may be audited will give the Secretary the flexibility to address any future situations that may arise where it will be necessary to conduct an audit in relation to export operations.

Matters to which audit must relate

Subclause 266(2) will provide that an audit under subclause 266(1) must relate to one or more of the following matters:

- whether a kind of export operations or a kind of goods comply, have complied, or will comply with a requirement of the Bill that relates to the export operations or the goods;
• whether an importing country requirement relating to a kind of export operations or a kind of goods is being, has been or will be met;

• whether a kind of export operations are being, have been or will be carried out in accordance with an approved arrangement;

• whether conditions of the accreditation of a property, the registration of an establishment, an approved arrangement, an export licence or an export permit, are being, have been or are likely to be complied with;

• whether a matter stated, or to be stated in a government certificate or a tariff rate quota certificate in relation to a kind of goods is correct;

• any other matter relating to the operation of the Bill prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe other matters to which an audit may relate will provide the Secretary with the flexibility to address any future situations that may arise where it will be necessary to conduct an audit in relation to a matter that is not otherwise covered by subclause 266(2). It also reflects the likelihood that there will be changes to the export supply chain from time to time which will necessitate the ability to require an audit and may need to commence at short notice.

Subclause 266(3) will enable an audit under subclause 266(1) to deal with anything that will be reasonably necessary for the effective conduct of the audit or incidental to the matter to which the audit will relate. This is intended to ensure that the auditor may take a broad range of matters into account whilst conducting an audit. For example, an audit may be conducted of export operations carried out at a registered establishment in relation to whether conditions of the registered establishment are being followed. While conditions of a registered establishment will generally relate to prescribed goods, an auditor would still be able to consider the impact on those prescribed goods of any non-prescribed goods produced at the establishment.

_Please note_: This is an example of a line of text that has been split and is not continuous.

**Period during which certain audits may be conducted**

Subclause 266(4) will set a time limit on the audit of export operations in relation to non-prescribed goods for which a government certificate or tariff rate quota certificate has been issued. It will provide that an audit of export operations carried out in relation to the non-prescribed goods that were certified may be conducted for up to 18 months after the government certificate or tariff rate quota certificate was issued. This will enable the Secretary to review the circumstances in which the certificate was issued if, for example, there is a complaint from an importing country about the exported non-prescribed good. To give certainty to the holder of the certificate, the ability to audit will be limited to 18 months after the certificate was issued.

**Who may conduct audit**

Subclause 266(5) will limit who may carry out an assessment of goods to an authorised officer or an approved auditor. These limitations will ensure a person conducting an audit has been authorised or approved to do so. The limitation will also be necessary to ensure that only persons with the appropriate skills, qualifications and training will be able to undertake a role in auditing export operations. This will ensure that trading partners will have confidence in the reliability of the export controls that will be placed on the goods.

A person who can conduct an audit is defined as an auditor (see the definitions of approved auditor, authorised officer and auditor in clause 12 of the Bill).
Clause 267 Audits in relation to persons performing functions or exercising powers under this Act

Clause 267 will enable the Secretary to require an audit of the performance of functions and the exercise of powers of certain persons under the Bill. Clause 267 will also enable the Secretary to require an audit of those persons in relation to compliance with the conditions that will apply to their performance of functions or exercise of powers under the Bill. This provision will provide trading partners with the necessary assurance that persons who are performing functions or exercising powers under the Bill will be acting competently and in accordance with the Bill.

Paragraph 267(1)(a) will provide that the Secretary may require an audit to be conducted in relation to the performance of functions and exercise of powers under the Bill by a person who is, or was, any of the following:

- a third party authorised officer (including a person whose authorisation as a third party authorised officer is, or was, suspended under clause 296 or 298C of the Bill);
- a person whose authorisation as a third party authorised officer is suspended under clause 296 of the Bill (to determine, for example, that there is no reason why the suspension should not be revoked);
- an approved auditor (who will perform functions and exercise powers under Part 1 of Chapter 9 of the Bill);
- an approved assessor (who will perform functions and exercise powers under Part 2 of Chapter 9 of the Bill);
- an accredited veterinarian (who will perform functions and exercise powers under Part 5 of Chapter 9 of the Bill); and
- any other person (other than a Commonwealth authorised officer or a State or Territory authorised officer) who performs or performed functions or exercises or exercised powers under the Bill.

Paragraph 267(1)(b) will provide that the Secretary may require an audit to be conducted in relation to the compliance by a person referred to in paragraph 267(1)(a) with the conditions that will apply to the performance of functions or the exercise of powers by the person under the Bill. This will enhance the quality assurance process to ensure that all persons are acting not only in accordance with the Bill, but also in accordance with the conditions of their authorisation, approval or accreditation.

Who may conduct audit

Subclause 267(2) will set out who may conduct an audit for the purposes of clause 267. These will be Commonwealth authorised officers (when authorised to do so) or a person prescribed by the rules made under clause 432 of the Bill. Subclause 267(3) will enable the rules to prescribe the following persons for the purposes of being able to conduct an audit under clause 267:

- a State or Territory authorised officer;
- a third party authorised officer;
- an approved auditor (see the definition of approved auditor in clause 12 of the Bill).

Enabling the rules made under clause 432 of the Bill to prescribe who may conduct an audit of certain persons exercising powers or performing functions under the Bill, will provide the Secretary with the flexibility to determine the type of auditors that will be appropriate in
different circumstances. This may, for example, be specific for the category of person being audited. The power of the Secretary to make rules for the purposes of subclause 267(3) will be limited to certain classes of people to ensure that only persons with the appropriate skills, qualifications and training will be able to undertake audits. This will ensure that trading partners will have confidence in the oversight of persons who are performing functions or exercising powers under the Bill.

Clause 268 Single audit or program of audits may be required

Clause 268 will enable the Secretary to require a single audit or a program of audits to be conducted, under clause 266 or clause 267 of the Bill, in relation to a specified matter or matters included in a specified class of matters.

For example, clause 268 will enable the Secretary to require an audit to be undertaken in relation to all export operations carried out at a registered establishment, or some of the export operations at a registered establishment. If the audit raises an issue of non-compliance, the Secretary may require an increase in the number of audits, or a program of audits, to monitor compliance. The Secretary will also be able to exercise the same power to require a single audit or a program of audits to be conducted in relation to overseeing the performance of an individual. This will enable the Secretary to have the necessary discretion to require audits to be undertaken to monitor compliance with the Bill.

A note will be included at the end of clause 268 to clarify that if the Secretary has required a program of audits to be conducted in relation to a matter, the Secretary may also require additional audits to be conducted in relation to the matter. The note will also refer the reader to subsection 33(1) of the Acts Interpretation Act.

Clause 269 Relevant person for an audit

Clause 269 will set out who will be the relevant person for an audit under Part 1 of Chapter 9 of the Bill.

Identifying the relevant person will be necessary for the purposes of clause 270 of the Bill (conduct of an audit) and clause 271 of the Bill (who must provide facilities and assistance that are reasonably necessary for the conduct of an audit to the person conducting an audit). The purpose of this clause is to make it clear which persons may be affected by the conduct and outcome of an audit and therefore who may be required to provide assistance to the person conducting the audit or to respond to their requests.

The relevant person will depend on the kind of audit that is undertaken. This is set out as follows:

- for an audit of export operations carried out at an accredited property or covered by the accreditation of the property—the manager of the property;
- for an audit of export operations carried out at a registered establishment or covered by the registration of the establishment—the occupier of the establishment;
- for an audit of export operations covered by an approved arrangement—the holder of the approved arrangement;
- for an audit of export operations covered by an export licence—the holder of the export licence;
• for an audit of export operations carried out in relation to a kind of prescribed goods by a person who has applied for an export permit for the goods—the person who applied for the export permit;
• for an audit of export operations carried out in relation to a kind of prescribed goods by a person to whom an export permit for the goods has been issued—the person to whom the export permit was issued;
• for an audit of export operations carried out in relation to a kind of goods by a person who has applied for a government certificate or a tariff rate quota certificate in relation to the goods—the person who applied for the certificate;
• for an audit of export operations carried out in relation to a kind of goods by a person to whom a government certificate or a tariff rate quota certificate in relation to the goods has been issued—the person to whom the certificate was issued;
• for an audit of export operations carried out in circumstances prescribed by rules made under clause 432 for the purposes of paragraph 266(1)(g) of the Bill—the person who carried out the export operations; or
• for an audit under clause 267 of the Bill—the person to whom the audit relates.

Relevant person will be defined in clause 12 of the Bill. While this will include a relevant person for an audit which will be set out in clause 269, the definition will also cover different types of relevant persons for the purposes of other provisions in the Bill.

**Clause 270 Conduct of audit**

Subclause 270(1) will provide that the Secretary does not need to give notice of an audit under Part 1 of Chapter 9 of the Bill. The ability to undertake an audit without notice, rather than only when an audit will be scheduled, is intended to ensure relevant requirements are being met and conditions are being complied with on an ongoing basis. This will provide further assurances to trading partners that their import requirements are being met. Subclause 270(1) will not, however, prevent the Secretary from giving notice of an audit.

Subclause 270(2) will provide that an auditor must give the relevant person for the audit a description of the scope of the audit before starting the audit. The intent of this requirement is to ensure that the relevant person will be aware of what the auditor intends to (consider under clause 272 of the Bill) and to ensure the relevant person will be able to provide the facilities and assistance that are reasonably necessary for the conduct of the audit in accordance with clause 271 of the Bill.

Subclause 270(3) will provide that before entering premises to conduct an audit, an auditor must show their identity card (which will be issued under clause 306 of the Bill) to the relevant person for the audit, or another person who apparently represents the relevant person for the audit. This will only be a requirement if the relevant person for the audit or the other person requests the auditor to do so, or in circumstances where notice of the audit was not given to the relevant person for the audit.

The intent of this requirement is to authenticate the identity of the auditor before they enter the premises or commence exercising powers in relation to the audit, particularly when no notice was given in relation to the audit.
Rules may make provision in relation to other matters

Subclause 270(4) will provide that the rules may make provision for and in relation to other matters relating to the conduct of an audit and the process to be followed after an audit has been completed.

Subclause 270(5) will provide examples of the types of matters that may be covered by the rules made for the purposes of subclause 270(4). This includes:

- information that must be provided to the relevant person for the audit during the audit or after the audit is completed;
- requirements for, and in relation to, reports to be provided in relation to an audit; and
- actions the Secretary may require the relevant person for the audit to take after the audit has been completed.

Enabling the rules made under clause 432 of the Bill to prescribe other matters provides the Secretary with the flexibility to specify matters and processes that are appropriate for an audit. This may be specific to, for example, a kind of goods. It will also be necessary to accommodate the range of export operations, functions and powers to which an audit may relate. These matters may relate to a range of technical and administrative issues and are likely to change from time to time and may need to commence at short notice.

Clause 271 Relevant person for an audit must provide assistance

Clause 271 will provide that the relevant person for an audit must provide the auditor with the facilities (such as an office) and assistance that is reasonably necessary for the conduct of the audit. This will ensure the auditor will be able to conduct an effective audit.

The Bill will include a range of consequences where a person does not provide assistance in relation to an audit. This includes, for example, the suspension or revocation of an accredited property (see subparagraphs 94(d)(iii) and 102(d)(iii) of the Bill, respectively) or the suspension or revocation of a registered establishment (see subparagraphs 127(1)(g)(iii) and 138(1)(g)(iii) of the Bill, respectively). It will also be a ground for an issuing body to refuse to issue a government certificate under clause 67 of the Bill. Another consequence will be that the auditor may be unable to carry out the audit. This may result in the Secretary requiring a program of additional audits or more formal monitoring of compliance, and investigations into possible non-compliance with the Bill.

These consequences are intended to act as a strong deterrent for conduct that is inconsistent with the requirements to provide facilities and assistance that will be reasonably necessary to carry out the audit.

A note is included after clause 271 to clarify that a failure to comply is a ground for suspension or revocation of the accreditation of a property, the registration of an establishment, an approved arrangement or an export licence.

Clause 272 Powers of auditors

Subclause 272(1) will provide that, for the purpose of conducting an audit under Part 1 of Chapter 9 of the Bill, an auditor will be able to do anything the auditor considers necessary. This will include the following:
• request a person, who the auditor reasonably believes has information or documents that are relevant to the audit, to answer questions, provide information in writing, or produce the documents;
• take samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates;
• if the auditor is an authorised officer—take, test or analyse samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates.

The ability of an auditor to do anything the auditor considers necessary when conducting an audit, may include, for example, seeking consent to enter premises or to see a demonstration of export operations. That is, the indicative list of what an auditor may do when conducting an audit as set out in subclause 272(1) does not list all the things the auditor may be able to do when conducting an audit and does not, for example, preclude the auditor doing similar things to what is set out in clause 379 (in relation to applications generally) of the Bill.

Three notes will be included at the end of subclause 272(1). Note 1 will advise readers that an auditor who is an authorised officer will also be able to give a direction under clause 305 of the Bill. Note 2 will refer the reader to Division 2 of Part 6 of Chapter 11 of the Bill which will deal with the taking, testing and analysing of samples. Note 3 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 137.1 and 137.2 of the Criminal Code and clauses 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents to an auditor.

The Bill will include a range of consequences where a person does not comply with a request made by an auditor under clause 272. This includes, for example, the suspension (see subparagraph 94(d)(iv) of the Bill) or revocation (see subparagraph 102(d)(iv) of the Bill) of an accredited property. This will have the effect of prohibiting export operations from being carried out. An issuing body may also refuse to issue a government certificate under clause 67 of the Bill.

Subclause 272(2) will provide that, in addition to the powers that will be set out in subclause 272(1), an auditor will be able to make copies of, or take extracts from, a document or record produced under paragraph 272(1)(a), and for that purpose, may remove the document or record from the place where it was produced.

Division 3—Approved auditors

Clause 273 Secretary may approve persons to conduct audits

Subclause 273(1) will provide that the Secretary may approve, in writing, a person or each person in a specified class of persons to conduct audits under Part 1 of Chapter 9 of the Bill.

Subclause 273(2) will provide that an instrument of approval under subclause 273(1) will not be a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the Legislation Act. Subclause 273(2) will make a statement as to the law (that is, that instruments of approval are not legislative instruments) and will not create an actual exemption to that Act.
Subclause 273(3) will provide that the Secretary must not approve a person to conduct audits under this Part unless the Secretary is satisfied that a person satisfies the training and qualification requirements determined under subclause 273(4), or that the person will satisfy those training and qualification requirements before they conduct any audits.

Subclause 273(4) will require the Secretary to determine, in writing, the training and qualification requirements for persons to conduct audits. This will ensure that all approved auditors have the necessary skills, qualifications and experience to conduct audits.

Subclause 273(5) will provide that a determination as to the training and qualification requirements for approved auditors, under subclause 273(4), will not be a legislative instrument, for the purposes of the definition of legislative instrument in section 8 of the Legislation Act. Subclause 273(5) will make a statement as to the law (that is, that the determination is not a legislative instrument) and will not create an actual exemption to that Act.

Subclause 273(6) will enable the rules to make provision for and in relation to matters relating to the approval of persons to be auditors for the purposes of the Bill. Enabling the Secretary to make rules under clause 432 of the Bill relating to the approval of persons to be auditors will provide the Secretary with the discretion to prescribe matters in addition to the examples set out in subclause 273(7). This may be necessary, for example, to address specific training, qualification and skill requirements, and may be taken into account when approving a person to be an auditor. The rules will also add a degree of flexibility to the types of considerations that may be relevant to approving a person to be an auditor.

Subclause 273(7) will provide examples of the types of matters that might be included in rules made for the purposes of subclause 273(6). Those matters are:

- applications for approval;
- dealing with such applications;
- additional requirements that must be met for approval;
- matters to which the Secretary may or must have regard in considering an application for approval;
- conditions of an approval;
- the period of effect of an approval;
- assessment of the competency of applicants; and
- suspension and revocation of an approval.

Enabling the Secretary to make rules under clause 432 of the Bill relating to the approval of persons to be auditors will provide the Secretary with the discretion to prescribe matters in addition to the examples set out in subclause 273(4). This may be necessary, for example, to address specific training, qualification and skill requirements that may be taken into account when approving a person to be an auditor. The rules will also add a degree of flexibility to the types of considerations that may be relevant to approving a person to be an auditor.

The effectiveness of, and confidence in, the export control regime depends on the capacity and capability of persons performing functions and exercising powers under the Act. Relevant skills, training or experience will be taken into account before a person is approved to conduct audits under the Act.
Clause 274    Rules may provide for classes of persons to be auditors

Clause 274 will enable the rules made under clause 432 of the Bill to provide that a person who will be included in a specified class of persons may conduct audits under Part 1 of Chapter 9 of the Bill.

Enabling the rules to prescribe classes of persons to be auditors provides the Secretary with the flexibility to specify a particular group of persons who will meet the requirements of being an auditor to be approved as auditors. This will be in addition to the Secretary being able to approve, in writing, a person or each person in a class of persons to be an approved auditor under subclause 273 of the Bill.

Clause 275    Approved auditors may charge fees

Subclause 275(1) will provide that an approved auditor will be able to charge a fee in relation to things done in the performance of the approved auditor’s functions or the exercise of the approved auditor’s powers under the Bill. This will include the provision of services and will enable such auditors to recover their costs on a commercial basis for providing those services.

Subclause 275(2) will prescribe that a fee must not be such as to amount to taxation. This is to address the constitutional limitation on the imposition of a tax.

PART 2—ASSESSMENT OF GOODS

Division 1—Introduction

Clause 276    Simplified outline of this Part

Clause 276 will provide a simplified outline of Part 2 of Chapter 9 of the Bill, which will provide for matters in relation to the assessment of goods. These include provisions that will describe the circumstances in which an assessment of goods may be carried out, the purpose of and process for carrying out an assessment in relation to goods, who may carry out an assessment, and the powers that may be exercised for the purpose of conducting an assessment. Part 2 of Chapter 9 of the Bill will also provide that an approved assessor will be able to charge a fee in relation to things done in the performance of the approved assessor’s functions or the exercise of the approved assessor’s powers under the Bill.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 2 of Chapter 9 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—General

Clause 277    Circumstances in which an assessment may be carried out etc.

Circumstances in which assessment may be carried out

Subclause 277(1) will provide that an assessment of goods may be carried out under Part 2 of Chapter 9 of the Bill only if the assessment is required or permitted to be carried out under the Bill (including under rules made under clause 432 of the Bill for the purposes of subclause 277(2)).
A note will be included at the end of subclause 277(1) to provide examples of when the Secretary may require an assessment of goods to be carried out. This includes for the purpose of deciding whether to issue a government certificate in relation to goods (see paragraph 68 (c) of the Bill) or an export permit for a kind of prescribed goods (see paragraph 241(c) of the Bill).

Subclause 277(2) will enable the rules made for the purposes of clause 277 to prescribe circumstances in which the Secretary may require or permit an assessment of goods to be carried out for the purpose of Part 2 of Chapter 9 of the Bill. This will be in addition to the circumstances already provided for in the Bill, including circumstances related to permits and certificates, as noted above.

Enabling the rules made under clause 432 of the Bill to prescribe other circumstances in which an assessment of goods may be carried out provides the Secretary with the flexibility to determine when it will be necessary to do so. This may be specific to, for example, a kind of goods, kind of export operation, or point of time in the supply chain. It also reflects the possibility that the circumstances requiring an assessment are likely to change from time to time and may need to commence at short notice.

**Purpose of assessment**

Subclause 277(3) will provide that the purpose for carrying out an assessment of goods will be to verify one or more of the following:

- that the requirements of the Bill in relation to the export of the goods have been complied with, or will be complied with before the goods are imported into the importing country;
- that the importing country requirements relating to the goods have been met, or will be met before the goods are imported into the importing country; or
- that a matter stated, or to be stated, in a government certificate in relation to the goods is true and correct.

Therefore, while an assessment of goods may be required or permitted by the Bill (including under the rules), this will only be in circumstances where it will be necessary to achieve one of the purposes listed in subclause 277(3).

Subclause 277(4) will provide that an assessment of goods will also be able to deal with anything that will be reasonably necessary for the effective conduct of the assessment or incidental to the matter to which the assessment relates. This is intended to ensure that the assessor may take a broad range of matters into account whilst conducting an assessment. For example, it would be reasonably necessary during an assessment of goods for an assessor to assess the container in which the goods are carried.

**Who may carry out assessment**

Subclause 277(5) will limit who may carry out an assessment of goods to an authorised officer or an approved assessor. These limitations will ensure a person conducting an assessment has been authorised or approved to do so. The limitation will also be necessary to ensure that only persons with the appropriate skills, qualifications and training will be able to undertake a role in assessing goods. This will ensure that trading partners will have confidence in the reliability of the export controls that will be placed on the goods. A note
will be included at the end of subclause 277(5) to refer the reader to the definition of approved assessor in clause 12 of the Bill.

Clause 278 Relevant person for an assessment of goods

Clause 278 will set out who will be the relevant person for an assessment of goods under Part 2 of Chapter 9 of the Bill.

Identifying the relevant person will be necessary for the purposes of clause 279 of the Bill which will set out the process for carrying out an assessment of goods etc. The purpose of this clause will be to make it clear which persons may be affected by the conduct and outcome of an assessment, and therefore who may be required to provide assistance to the person conducting the assessment and respond to their requests.

The relevant person will depend on the kind of assessment of goods that will be undertaken. This is set out as follows:

- for an assessment of goods in relation to which an application has been made under the Bill—the applicant;
- for an assessment of goods in relation to which a government certificate has been issued—the holder of the government certificate;
- for an assessment of goods for which an export permit has been issued—the holder of the export permit;
- for an assessment of goods in relation to which a notice of intention to export has been given—the person who gave the notice;
- for an assessment of goods in any other circumstances prescribed by the rules—the person prescribed by the rules.

Relevant person will be defined in clause 12 of the Bill. While this will include a relevant person for an assessment which will be set out in clause 278, the definition will also cover different types of relevant persons for the purposes of other provisions in the Bill.

Enabling the rules made under clause 432 of the Bill to prescribe the relevant person for an assessment of goods provides the Secretary with the flexibility to address future situations that may arise where it will be necessary to conduct an assessment in relation to export operations, and the relevant person is not otherwise covered under clause 278.

Clause 279 Process for carrying out an assessment of goods etc.

Subclause 279(1) will provide that the rules may make provision for and in relation to:

- the carrying out of an assessment of goods; and
- the process to be followed after an assessment has been completed.

This will provide certainty to the assessor as to what they will need to carry out and to the relevant person involved in the assessment of goods.

Subclause 279(2) will set out examples of what rules made for the purposes of subclause 279(1) may address. These will be:

- the process to be followed during an assessment of goods;
- requirements for, and in relation to, documents to be provided in relation to an assessment of goods (including statements verifying the results of the assessment);
- information that must be provided to the relevant person for an assessment of goods during the assessment or after the assessment is completed; and
- actions the Secretary may require the relevant person for an assessment of goods to take after the assessment has been completed.

Enabling the rules made under clause 432 of the Bill to prescribe matters relating to the conduct of assessments provides the Secretary with the flexibility to specify matters and processes relevant to the assessment of goods. This may be, for example, specific to a kind of goods. These matters are likely to relate to a range of technical and administrative issues and are likely to change from time to time and may need to commence at short notice.

**Clause 280**  
**Powers that may be exercised in carrying out an assessment of goods**

Subclause 280(1) will provide that for the purpose of carrying out an assessment of goods under Part 2 of Chapter 9 of the Bill, an assessor will be able to do anything the assessor considers necessary, including:

- request a person, who the assessor reasonably believes has information or documents that are relevant to the assessment, to answer questions, provide information in writing, or produce the documents;
- take, test or analyse samples of the goods;
- arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of goods.

The ability of an assessor to do anything the assessor considers necessary when conducting an assessment, may include, for example, seeking consent to enter premises or to see a demonstration of export operations. That is, the indicative list of what an assessor may do when conducting an assessment as set out in subclause 280(1) does not list all the things the assessor may be able to do when conducting an assessment and does not, for example, preclude the assessor doing similar things to what is set out in clause 379 (in relation to applications generally) of the Bill.

Three notes will be included at the end of subclause 280(1). Note 1 will advise the reader that an assessor who is an authorised officer will also be able to give a direction under clause 305 of the Bill. Note 2 will refer the reader to Division 2 of Part 6 of Chapter 11 of the Bill which will deal with the taking, testing and analysing of samples. Note 3 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and clauses 368 and 369 of the Bill). The sections specified in the *Criminal Code* and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents to an assessor.

Subclause 280(2) will enable an assessor to make copies of, or take extracts from, a document or record produced under paragraph 280(1)(a), and for that purpose, may remove the document from the place where it was produced.

A note will be included at the end of subclause 280(2) to clarify that if the relevant person for an assessment of goods does not comply with a request under clause 280, it may not be possible to verify a matter referred to in subclause 277(3) of the Bill. As a result, the Secretary may, for example, refuse to issue a government certificate in relation to the goods or
an export permit for the goods. The note will also refer the reader to clauses 67 and 225 of the Bill.

Division 3—Approved assessors

Clause 281 Secretary may approve persons to carry out assessment of goods

Subclause 281(1) will provide that the Secretary may, in writing, approve a person, or each person in a specified class of persons, to carry out assessments of goods under Part 2 of Chapter 9 of the Bill.

Subclause 281(2) will provide that an instrument of approval under subclause 281(1) will not be a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the Legislation Act. Subclause 281(2) will make a statement as to the law (that is, that instruments of approval will not be legislative instruments) and will not create an actual exemption to that Act.

Subclause 281(3) will provide that the Secretary must not approve a person to carry out assessments of goods under this Part unless the Secretary is satisfied that the person satisfies, the training and qualification requirements determined under subclause 281(4), or the person will satisfy those training and qualification requirements before the person carries out any assessments.

Subclause 281(4) will require the Secretary to determine, in writing, the training and qualification requirements for persons to carry out assessments of goods. This will ensure that all approved assessors have the necessary skills, qualifications and experience to carry out assessments of goods.

Subclause 281(5) will provide that a determination as to the training and qualification requirements for approved assessors, under subclause 281(4), will not be a legislative instrument, for the purposes of the definition of legislative instrument in section 8 of the Legislation Act. Subclause 281(5) will make a statement as to the law (that is, that the determination is not a legislative instrument) and will not create an actual exemption to that Act.

Subclause 281(6) will provide that the rules made under clause 432 of the Bill may make provision for and in relation to matters relating to the approval of persons to be assessors under subclause 281(1). Enabling the Secretary to make rules under clause 432 of the Bill relating to the approval of persons to be assessors will provide the Secretary with the discretion to prescribe matters in addition to the examples set out in subclause 281(7). This may be necessary, for example, to address specific training, qualification and skill requirements, and may be taken into account when approving a person to be an assessor. The rules will also add a degree of flexibility to the types of considerations that may be relevant to approving a person to be an assessor.

Subclause 281(7) will provide examples of the types of matters that may be included in rules made for the purposes of subclause 281(6). That is, the rules will be able to make provision for and in relation to:

- applications for approval;
- dealing with such applications;
- additional requirements that must be met for approval;
• matters to which the Secretary may or must have regard in considering an application for approval;
• conditions of an approval;
• the period of effect of an approval;
• assessment of the competency of applicants; and
• suspension and revocation of an approval.

The effectiveness of, and confidence in, the export control regime depends on the capacity and capability of persons performing functions and exercising powers under the Bill. Relevant skills, training or experience will be taken into account before a person is approved to carry out assessments of goods under the Bill.

Clause 282  Rules may provide for classes of persons to be assessors

Clause 282 will enable the rules made under clause 432 of the Bill to provide that a person included in a specified class of persons is to carry out assessments of goods under Part 2 of Chapter 9 of the Bill.

Enabling the rules to prescribe classes of persons to be assessors provides the Secretary with the flexibility to enable a specified group of persons who will already have the requirements of being an assessor to be approved as assessors. This will be in addition to the Secretary being able to approve, in writing, a person or each person in a class of persons to be an approved assessor under subclause 281(1) of the Bill.

Clause 283  Approved assessors may charge fees

Subclause 283(1) will provide that an approved assessor will be able to charge a fee in relation to things done in the performance of the approved assessor’s functions or the exercise of the approved assessor’s powers under the Bill. This will include the provision of services and will enable such assessors to recover their costs on a commercial basis for providing those services.

Subclause 283(2) will prescribe that a fee must not be such as to amount to taxation to address the constitutional limitation on the imposition of a tax.

PART 3—POWERS OF THE SECRETARY

Division 1—Introduction

Clause 284  Simplified outline of this Part

Clause 284 will provide a simplified outline of Part 3 of Chapter 9 of the Bill, which will provide for matters in relation to the powers of the Secretary. These include provisions that will require a person to give the Secretary certain information or documents; enable the use, under the Secretary’s control, of computer programs for making certain decisions under the Bill; enable the rules to authorise the payment of money for systems audits; enable certain powers and functions to be delegated; and enable the Minister to give certain directions to the Secretary. The power to issue an export permit for certain kinds of prescribed goods may be subdelegated to a nominated export permit issuer. The simplified outline is included to assist the reader to understand the substantive clauses of Part 3 of Chapter 9 of the Bill; however, it
is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Powers of the Secretary

Clause 285  Power to require information or documents

Clause 285 will set out the powers of the Secretary to require information and documents in certain circumstances and in relation to certain matters. The power to require information or documents will apply broadly. This is intended to ensure that the Secretary has the ability to obtain any relevant information or documents needed to maintain the integrity of the regulatory framework and effectively administer the requirements of the Bill.

Subclause 285(1) will provide that the Secretary may, by written notice given to a person, require a person within a reasonable time stated in the notice, to give the Secretary any information, or produce any documents that will be specified in that written notice.

That information or those documents must relate to:

- any prescribed goods that have been, or are intended to be, exported; or
- any permanently prohibited goods that have been exported, or any goods in relation to which a temporary prohibition determination applied that have been exported (whether the goods were exported before or after the temporary prohibition determination took effect); or
- any non-prescribed goods in relation to which an application for a government certificate or a tariff rate quota certificate has been made or issued.

Subclause 285(2) will provide examples of what the information or documents that will be required to be given under subclause 285(1) may relate, which may include any of the following:

- the export operations of the person or another person;
- any live animal that has been, or is intended to be, exported;
- the preparation of any goods referred to in subclause 285(1);
- the material or ingredients:
  - of which goods specified in subclause 285(1) are, or are intended to be, composed; or
  - from which such goods are, or are intended to be, derived.
- any animals that are intended to be, or that have been, used in the preparation of goods referred to in subclause 285(1); and
- the source of:
  - any goods referred to in subclause 285(1);
  - any material or ingredients referred to in paragraph 285(1)(d); or
  - any animals referred to in paragraph 285(1)(e).

Subclause 285(3) will provide that a written notice that may be given under subclause 285(1) may require information or documents that relate to non-prescribed goods, before or after those goods have been exported and whether or not the goods have been accepted or rejected by the importing country. For example, it may be necessary to identify the source of the ingredients that may be included in those goods after the goods have been rejected by the importing country in order to be able to address any importing country concerns.
Subclause 285(4) will provide that a person contravenes this subclause if the person is required to give the Secretary information or produce documents in accordance with a notice given to the person and the person fails to do so.

Three notes will be added at the end of subclause 285(4). Note 1 will provide that the physical elements of an offence against subclause 285(5) will be set out in subclause 285(4). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Note 2 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and clauses 368 and 369 of the Bill). The sections specified in the *Criminal Code* and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents to the Secretary which may be inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Note 3 will provide that subclause 285(4) is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information and documents, and if necessary, can take immediate action. Clause 426 of the Bill will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material would only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill and would not result in criminal or civil proceedings against the person who provided the material.

Subclause 285(5) will provide that a person will commit a fault-based offence if the person contravenes subclause 285(4). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention of subclause 285(4) will be 600 penalty units.

Subclause 285(6) will provide that a person will be liable to a civil penalty of 240 penalty units if the person contravenes subclause 285(4). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 285(4). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 285(4) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 285(6) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty for the fault-based offence and the civil penalty reflects the serious consequences that may result from conduct that contravenes this clause. Failure to provide information and documents in accordance with the Secretary’s request may adversely affect the Secretary’s decision making process, and undermine the integrity of the regulatory framework provided.
for by the Bill. The penalty provisions are intended to provide an effective deterrent to this conduct.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 286  Power to arrange for certain decisions to be made by computer programs**

Subclause 286(1) will enable the Secretary to arrange for the use, under the Secretary’s control, of computer programs for making certain decisions under the Bill. For example, a computer program may produce an export permit following the entry of relevant information. Allowing a computer program to make certain decisions is intended to improve administrative efficiency for exporters and the Secretary, and recognises changes in technology.

Subclause 286(2) will enable the rules made for the purposes of clause 286 to prescribe the kinds of decisions under the Bill that may be made by the operation of a computer program under an arrangement made under subclause 286(1); the persons or bodies that may use such a computer program; and the conditions of that use.

Subclause 286(3) will provide that the Secretary will be required to take all reasonable steps to ensure that decisions made by the operation of a computer program under an arrangement made under subclause 286(1) are correct.

Enabling the Secretary to prescribe these matters in the rules made under clause 432 of the Bill will provide flexibility in relation to the use of computer programs to reflect the constant changes that will be required as technology changes.

Subclause 286(4) will provide that a decision made by the operation of a computer program under an arrangement made under subclause 286(1) is to be taken as a decision by the Secretary. This will be necessary to trigger the review of decision provisions that will be set out in Part 2 of Chapter 11 of the Bill.

Subclause 286(5) will make it clear that the Secretary may substitute a decision made by a computer program with the Secretary’s own decision if the Secretary is satisfied that the decision made by the computer program is incorrect. This may be necessary in circumstances where incorrect or incomplete information is entered into the computer program which results in an incorrect decision, if there is information or circumstances which the computer program is not able to take into account (for example, because of a technical glitch) which results in an incorrect decision, or because of a technical malfunction of the computer system.

**Clause 287  Rules may authorise Commonwealth to enter into arrangements under which money may be paid for certain purposes**

Subclause 287(1) will enable the rules made under clause 432 of the Bill to authorise the Secretary, on behalf of the Commonwealth, to enter into arrangements under which the Commonwealth may pay money for purposes connected with certifying, verifying or auditing the operation of the Bill or a person’s compliance with importing country requirements.
Subclause 287(2) will provide that the rules may prescribe the circumstances in which the Secretary may, on behalf of the Commonwealth, enter into an arrangement for a specified purpose referred to in subclause 287(1).

Enabling the rules made under clause 432 of the Bill to authorise the Commonwealth to enter into arrangements and prescribe the circumstances under which the Commonwealth is authorised to enter into an arrangement provides the Secretary with the flexibility to determine when this is appropriate. This may depend on numerous factors, including the purpose of the arrangement and the person, such as a foreign person or foreign body, with whom the arrangement is to be entered into. For example, the rules made under this clause may authorise the Commonwealth to reimburse foreign officials in relation to their conduct of certain audits, which will facilitate market access for Australian exporters.

The rules may also set procedures that must be followed before the Secretary, on behalf of the Commonwealth, may enter into such an arrangement. For example, in relation to audits of individual exporters’ compliance with importing country requirements, the rules may prescribe criteria to determine which audits may be eligible for payment. Any moneys paid under an arrangement for the purposes of subclause 287(1) will be paid from funds appropriated by the Parliament under an annual appropriation act.

Subclause 287(3) will provide that subclauses 287(1) and 287(2) do not, by implication, limit the executive power of the Commonwealth to enter into arrangements.

**Clause 288 Delegation and subdelegation**

Clause 288 will allow the Secretary to delegate certain powers to SES employees and acting SES employees of the Department. SES employees will then be able to subdelegate certain powers to authorised officers or employees of the Department. This clause will also set out the powers that must not be delegated or subdelegated.

*Delegation by Secretary*

Subclause 288(1) will enable the Secretary to provide a written delegation for any of the Secretary’s functions or powers under the Bill to an SES employee, or an acting SES employee, in the Department. The functions or powers that may be delegated under subclause 288(1) will:

- include functions or powers the Secretary has as a relevant chief executive, authorised applicant, infringement officer or authorised person for the purposes of a provision of the Regulatory Powers Act because of the Bill (see Chapter 10 of the Bill); and
- exclude functions and powers referred to in the table that will be set out in paragraph 288(1)(b).

The powers set out in the table to paragraph 288(1)(b) that will not be able to be delegated are:

- subclause 286(1) of the Bill which will provide that the Secretary may arrange for the use of computer programs for making certain decisions under the Bill;
- subclause 364F(1) of the Bill which will provide that the Secretary may apply for an adverse publicity order in certain circumstances; and
- clause 432 of the Bill which will enable the Secretary to make rules (which will be legislative instruments for the purposes of the Legislation Act) prescribing matters:
required or permitted by the Bill to be prescribed by the rules; or
necessary or convenient to be prescribed for carrying out or giving effect to
the Bill.

The Secretary’s powers that must not be delegated will involve a high level of discretion and
may, for example, affect Australia’s national interests. Therefore, it is appropriate that these
powers are not delegated.

All other functions and powers of the Secretary, including those that are derived from the
Regulatory Powers Act, will be able to be delegated to an SES employee, or an acting SES
employee, in the Department. This is intended to ensure that decision making powers under
the Bill are still carried out efficiently and effectively in an operational environment where the
Secretary may not have the capacity to undertake all functions and powers conferred upon the
Secretary by the Bill.

Three notes will be included at the end of subclause 288(1). Note 1 will refer the reader to
section 12 of the Bill, in relation to the definition of Act, which includes a reference to
instruments made under the Bill. Note 2 will refer the reader to section 2B of the Acts
Interpretation Act for definitions of SES employee and acting SES employee. Note 3 will
refer the reader to sections 34AA (delegation to persons holding, occupying or performing the
duties of an office of position) and 34AB (effect of delegation) of the Acts Interpretation Act.

Subdelegation

Subclause 288(2) will provide that if, under subclause 288(1), the Secretary delegates a
function or power to an SES employee or an acting SES employee in the Department, the
employee may, in writing, subdelegate the function or power to:

- an authorised officer; or
- an APS employee in the Department; or
- if the function or power is to issue export permits for a kind of prescribed goods under
  section 225 (and without limiting paragraph (a) or (b) of this subsection)—a
  nominated export permit issuer in relation to prescribed goods of that kind.

Two notes under this subclause provides that section 225 deals with issuing export permits
and that an authorised officer may only perform a function, or exercise a power, if that
function or power is specified in the authorised officer’s instrument of authorisation (see
subsection 301(1)).

In an operational context, many of the powers that are delegated to SES staff may need to be
completed by staff at a lower classification level as a matter of administrative necessity. This
arises from the volume and timeliness of decision making and availability of SES officers
who have broad responsibilities. For example, the Secretary must decide to either register an
establishment or refuse to register an establishment in clause 112 of the Bill; however, in an
operational context, officers below SES level require the ability to register an establishment.

When a power is subdelegable (see subclause 288(3) for powers that will not be able to be
subdelegated) there will be no limitation in the Bill on which APS employees may receive the
subdelegation in order for there to be the greatest degree of flexibility. However,
subclause 288(2) is not intended to allow every power to be subdelegated to every individual
in every class listed; functions which may be subdelegated to each particular class of persons
will be determined administratively. Subdelegable powers have been identified on the basis that they do not have the capacity to affect national interests or Australia’s trading relationship with other countries. The attributes, qualifications or expertise that are needed or desirable to exercise a subdelegated power will vary for each subdelegable power. These requirements will be dealt with administratively, which will allow the relevant delegate to consider the detailed attributes, qualifications or expertise required for a subdelegate to exercise a specific power.

**Powers that must not be subdelegated**

Subclause 288(3) will set out the powers in the Bill that will not be able to be subdelegated by SES employees to ensure that responsibility for powers with more serious implications remains at a senior level. This includes, for example, the power to direct the occupier of a registered establishment to cease carrying out one or more kinds of export operations in relation to one or more kinds of prescribed goods at the establishment under subclause 132(1) of the Bill.

**Delegation and subdelegation under the rules**

Subclause 288(4) will provide that the rules may specify the functions or powers of the Secretary that must not be delegated or subdelegated.

Enabling the rules made under clause 432 of the Bill to specify functions or powers of the Secretary under the rules that must not be delegated or subdelegated will ensure that decisions under the rules are made at the appropriate level. This will mean that the Secretary can decide which powers involve a high level of discretion and therefore should not be delegated or subdelegated and where it is appropriate for powers and functions, such as those necessary to support operational activities, to be delegated.

**Delegate or subdelegate must comply with directions**

Subclause 288(5) will provide that in performing any functions or exercising any powers under a delegation or subdelegation, the delegate or subdelegate must comply with any directions of the Secretary or the person who delegated the function or power. This is intended to ensure that powers exercised by the delegate or the subdelegate are exercised appropriately and consistently. Clause 309 of the Bill will set out the general provisions relating to directions.

**Application of the Acts Interpretation Act 1901 to subdelegation**

Subclause 288(6) will clarify that sections 34AA (delegation to persons holding, occupying or performing the duties of an office or position), 34AB (effect of delegation) and 34A (exercise of powers and performance of functions or duties that depend upon the opinion etc. of delegates) of the Acts Interpretation Act apply in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation. This means that, for example, a person who has been subdelegated a power cannot further delegate that power.

**Clause 289 Minister may give directions to Secretary**

Subclause 289(1) will enable the Minister, by legislative instrument, to give directions to the Secretary in relation to the performance of the Secretary’s functions or the exercise of his or her powers in making rules under clause 432 of the Bill.
A note will be included under subclause 289(1) to advise readers that section 42 of the Legislation Act (relating to disallowance of legislative instruments) and Part 4 of Chapter 3 of that Act (relating to sunsetting) do not apply to directions given under subclause 289(1). This is notwithstanding that a direction under subclause 289(1) will be a legislative instrument and will be subject to tabling. This is because the Legislation (Exemptions and Other Matters) Regulation 2015, which was made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of the Legislation Act, provides that a legislative instrument that is a Ministerial direction is not subject to tabling or disallowance.

Subclause 289(2) will provide that the Minister must not give directions to the Secretary in relation to a decision on a particular application made under the Bill. This would prevent, for example, the Minister giving a direction to the Secretary to make a particular decision on an application for an approved arrangement.

The power to give directions is appropriate to enable the Minister to have a degree of engagement in, or oversight of, the rule-making power. But it does not enable the Minister to have any influence in relation to a particular application. This is reflective of administrative law principles.

**PART 4—AUTHORISED OFFICERS**

**Division 1—Introduction**

**Clause 290  Simplified outline of this Part**

Clause 290 will provide for a simplified outline of Part 4 of Chapter 9 of the Bill, which will provide for matters in relation to authorised officers. These include provisions which will enable the Secretary to authorise a person to be an authorised officer, determine conditions for those authorisations, enable the authorisations to be varied, revoked or suspended, provide that an authorised officer has the functions and powers set out in the instrument of authorisation, set out the grounds for when an authorised officer may give a direction and to whom, set out requirements for identity cards and offences under this Part.

The simplified outline is included to assist the reader to understand the substantive clauses of the Part; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

**Division 2—Authorisation**

**Clause 291  Authorisation of persons to be authorised officers**

Clause 291 will set out the circumstances in which the Secretary may authorise a person or a class of persons to be authorised officers, the functions and powers that they are authorised to perform or exercise under the Bill and any conditions that may be imposed on their authorisation under clause 292 of the Bill.

**Commonwealth authorised officers and State or Territory authorised officers**

Subclause 291(1) will enable the Secretary to provide written authorisation for a person, or each person in a class of persons, to be an authorised officer under the Bill if:
the person, or each person in a class of persons, is an officer or employee of a Commonwealth body; or

the person, or each person in a class of persons, is an officer or employee of a State or Territory body.

Subclause 291(2) will provide that the Secretary must not authorise an officer or employee of a State or Territory body unless an arrangement that relates to the officer or employee or a class of persons is in force under clause 294 of the Bill. This will address any constitutional issues about the Commonwealth vesting powers in State or Territory employees. This must happen before the Secretary can authorise an officer or employee of a State or Territory body to be an authorised officer.

Third party authorised officers

Subclause 291(3) will specify that a person who is not an officer or employee of a Commonwealth, State or Territory body may apply to the Secretary to be a third party authorised officer.

Requirements for applications

Subclause 291(4) will provide that an application made under subclause 291(3) must:

- if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner;
- if the Secretary has approved a form for making the application—include the information required by the form and be accompanied by any documents required by the form;
- include the information (if any) prescribed by the rules; and
- be accompanied by any documents prescribed by the rules.

The manner of the application approved by the Secretary could, for example, include the ability to make an application electronically.

Enabling the rules to prescribe any information or documents that must accompany an application will ensure that the Secretary has access to relevant information and documents available when considering an application. This flexibility will be necessary to accommodate the range of applications to which this provision may relate and the likelihood that there will be different information requirements in relation to each application.

A note will be included at the end of subclause 291(4) that will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill. The note will clarify that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons providing false or misleading information or documents, which is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Subclause 291(5) will provide that an application is taken not to have been made if the application does not comply with the requirements in subclause 291(4).
Secretary must decide whether to authorise person to be third party authorised officer

Subclause 291(6) will require the Secretary, on receiving an application from a person made under subclause 291(3), to authorise or refuse to authorise a person to be a third party authorised officer.

A note will be included at the end of subclause 291(6) that will advise the reader that a decision to refuse to authorise a person as a third party authorised officer under subclause 291(6) is a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Subclause 291(7) will provide that the Secretary may, in writing, authorise a person to be a third party authorised officer if:

- the person has made an application under subclause 291(3) of the Bill; and
- the person has given the Secretary a written notice stating:
  - the interests, pecuniary or otherwise, of the person that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer; or
  - if the person has no such interests—that fact; and
- any other requirement prescribed by the rules is, or has been, met.

The requirements set out in subclause 291(7) will enable the Secretary to properly assess an application by a third party authorised officer. The requirement to disclose any conflict of interest or potential conflict of interest before being authorised mirrors the requirements that public servants have under their Codes of Conduct and, for Commonwealth public servants, under legislation such as the PGPA Act.

A note will be included at the end of subclause 291(7) to advise readers that a Commonwealth, State or Territory authorised officer may be required to disclose an interest that conflicts or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer (see, for example, the PGPA Act).

Enabling the rules to prescribe the requirements for third party authorised officers will provide the Secretary with the flexibility to determine different requirements for different classes of third party authorised officers. This will enable the Secretary to effectively respond to changes in industry and market requirements to provide the most appropriate third party authorised officers in a timely manner.

Training and qualification requirements

Subclause 291(8) will ensure that the Secretary must not authorise a person to be an authorised officer unless the Secretary is satisfied that the person satisfies the training and qualification requirements determined under subclause 291(9), or the person will satisfy those training and qualification requirements before the person exercises any powers, or performs any functions, as an authorised officer.

Subclause 291(9) will require the Secretary to determine in writing the training and qualification requirements for authorised officers. This will ensure that all authorised officers have the necessary skills, qualifications and experience to perform the various functions (such as conduct an audit of export operations under Part 1 of Chapter 9 of the Bill or an assessment of goods under Part 2 of Chapter 9 of the Bill) and exercise the various powers that may be
conferred on them via their instrument of authorisation. Determinations under this subclause relate to administrative policy that will facilitate the requirement for authorised officers to have the training and qualifications necessary to perform the functions and exercise the powers set out in their instrument of authorisation.

Subclause 291(10) will provide that a determination as to the training and qualification requirements for authorised officers will not be a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the Legislation Act. Subclause 291(10) will make a statement as to the law (that is, that the determinations are not legislative instruments) and will not create an actual exemption to that Act.

**Instrument of authorisation**

Subclause 291(11) will ensure that the instrument of authorisation of a person as an authorised officer:

- must specify:
  - the functions and powers that the person may perform or exercise as an authorised officer under the Bill; and
  - any conditions prescribed by the rules that the Secretary has decided, under paragraph 292(1)(a), are not to be conditions of the authorisation; and
  - any additional conditions of authorisation imposed under paragraph 292(1)(b) of the Bill; and
- may specify the period in which the authorisation has effect.

This will ensure there will be a record of the powers that may be exercised and functions that may be performed by an authorised officer or a class of authorised officers. Authorised officers will only be able to perform the functions and exercise the powers that are specified in their instrument of authorisation for the period for which the authorisation has effect.

**Clause 292 Conditions of authorisation**

Subclause 292(1) will provide that an authorisation issued under subclause 291 of the Bill for a person to be an authorised officer will be subject to:

- any conditions (if any) in relation to the authorisation prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the authorisation); and
- any additional conditions that the Secretary considers appropriate; and
- if the person is authorised to be a third party authorised officer—the condition that the officer must comply with subclauses 292(2) and 292(3).

Enabling the rules to prescribe conditions in relation to the authorisation will provide the Secretary with the flexibility to determine all matters associated with engaging authorised officers. Being able to determine additional conditions provides flexibility to tailor particular authorisations, for example, for a specific type of authorised officer, in order to meet changing industry and market needs.

Three notes will be included at the end of subclause 292(1). Note 1 will refer the reader to clause 293 of the Bill, which will provide that a person who is a third party authorised officer may commit an offence or be liable to a civil penalty if the person contravenes a condition of the person’s authorisation.
Note 2 will highlight that a person who is a Commonwealth, State or Territory authorised officer may breach a code of conduct that applies to the person (see, for example, the Code of Conduct under the Public Service Act 1999) if the person contravenes a condition of the person’s authorisation.

Note 3 will advise the reader that a decision to authorise a person to be a third party authorised officer subject to additional conditions will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Third party authorised officer must disclose conflicts

Subclauses 292(2) and 292(3) will provide that a third party authorised officer must give, as soon as practicable after acquiring an interest, written notice to the Secretary of each interest acquired, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the third party authorised officer’s functions or exercise of their powers under the Bill.

A note will be included at the end of subclause 292(2) to provide that a Commonwealth authorised officer or a State or Territory authorised officer may be required under other legislation to disclose interests that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer (see, for example, the PGPA Act).

Clause 293 Third party authorised officers must not contravene conditions of authorisation

Clause 293 will prescribe a fault-based offence and a civil penalty provision that will apply if a third party authorised officer contravenes a condition of their authorisation. There is no penalty for Commonwealth, State or Territory authorised officers as their respective codes of conduct and legislation, such as the PGPA Act, are considered sufficient to deter this kind of conduct.

Subclause 293(1) will provide that a person will commit a fault-based offence if the person is a third party authorised officer, the person engages in conduct and the conduct contravenes a condition of the person’s authorisation as a third party authorised officer. The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both) for an individual.

Subclause 293(2) will provide that a third party authorised officer will be liable to a civil penalty of 240 penalty units if the person is a third party authorised officer and a condition of the person’s authorisation as a third party authorised officer is contravened. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention.

The civil penalty provided for in subclause 293(2) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent for a third party authorised officer to contravene conditions of their authorisation, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty for the fault-based offence and the civil penalty provision reflects the serious consequences that may result from an authorised officer acting in contravention of the authorised officer’s conditions of authorisation. Due to the range of potential functions and
powers that a third party authorised officer may exercise under the Bill, the contravention of a condition of authorisation could undermine the integrity of the regulatory framework and ultimately result in the export of goods that do not comply with relevant legislative and importing country requirements.

The penalty provisions are intended to provide an effective deterrent to this conduct. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 294 Arrangements for State or Territory officers or employees to be authorised officers

Subclause 294(1) will provide that the Secretary may enter into an arrangement with a State or Territory body for officers or employees of the body to be authorised officers. This will address any constitutional issues with the Commonwealth giving powers to State or Territory officials. If the Secretary does not enter into such an arrangement, the Secretary will be unable to authorise State or Territory officers to be authorised officers.

Subclause 294(2) will provide that an arrangement between the Commonwealth and a State or Territory body will not be a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the Legislation Act. Subclause 294(2) will make a statement as to the law (that is, that the arrangement will not be a legislative instrument) and will not create an actual exemption to that Act.

Division 3—Variation, suspension and revocation of authorisation

Subdivision A—Variation, suspension and revocation on Secretary’s own initiative

Clause 295 Variation of authorisation

Clause 295 will provide the circumstances in which the authorisation for an authorised officer to undertake functions or exercise powers under the Bill may be varied.

Subclause 295(1) will enable the Secretary to do any of the following to an instrument of authorisation for an authorised officer:

- vary the functions that the person may perform, or the powers that the person may exercise, as an authorised officer under the Bill;
- vary any conditions to which the person’s authorisation is subject under paragraph 292(1)(b) of the Bill (including by imposing new conditions);
- if the person’s instrument of authorisation specifies a period during which it has effect—vary the period during which the authorisation has effect;
- if the person’s instrument of authorisation does not specify a period during which it has effect—vary the authorisation to specify a period during which the authorisation is to have effect;
- vary any other aspect of the person’s authorisation.

The Secretary may do any of these things at any time, subject to the notice requirements in clause 298.
A note will be included under subclause 295(1) that will advise the reader that a decision made under subclause 295(1) is a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. The decision will be reviewable because it may have an adverse financial impact for that person. Any dispute arising from a variation of an authorisation for an authorised officer who is a Commonwealth, State or Territory officer or employee will be managed in accordance with the legislation under which those persons are engaged.

Subclause 295(2) will provide that if the third party authorised officer was given a notice to show cause under subclause 298(3) of the Bill, the variation should not take place before the earlier of the day after any response to the request is received by the Secretary; or the end of 14 days after the show cause notice was given (see subclause 298(3) of the Bill). The unvaried instrument of authorisation remains in effect for this response period.

Subclause 295(3) will provide that if the Secretary makes a variation of a person’s authorisation, the Secretary will be required to vary the person’s instrument of authorisation and give the person the varied instrument. This ensures that there is a record of what varied powers the authorised officer may exercise and functions that they may perform under their varied authorisation.

Clause 296 Suspension of authorisation

Clause 296 will provide the circumstances in which the authorisation for an authorised officer to undertake functions or exercise powers under the Bill may be suspended and the effect of the suspension on their authorisation as an authorised officer.

Subclause 296(1) will enable the Secretary to suspend a person’s authorisation as an authorised officer. The suspension may be at any time and for any reason, however it must be in writing and is subject to the notice requirements in clause 298.

A note will be included at the end of subclause 296(1) that will advise the reader that a decision under subclause 296(1) in relation to a third party authorised officer is a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. This will be because suspending the authorisation of a third party authorised officer may have an adverse financial impact for that person. Any dispute arising from a suspension of an authorisation for an authorised officer who is a Commonwealth, State or Territory officer or employee will be managed in accordance with the legislation under which those persons are engaged.

Period of suspension

Subclause 296(2) will limit the suspension period to be no more than 12 months. If there is a requirement to suspend the authorised officer for more than 12 months, the authorisation may be revoked under clause 297 of the Bill and the person would need to re-apply to be an authorised officer if the reasons for the suspension and revocation no longer exist. The 12 month period will mean that an authorised officer cannot be suspended indefinitely. During or at the end of 12 months, the suspension or the authorisation must be revoked by the Secretary. It is intended that the 12 month period will be sufficient for the authorised officer to address the reason for the suspension, if it is within their control to do so. For example, if the suspension relates to the competency of the authorised officer, they may seek additional training. However, if the suspension was in response to an importing country requirement, the authorised officer may not be able to address the matter.
Subclause 296(3) will provide that if a person has been given a show cause notice under subclause 298(3) of the Bill, before any suspension takes effect for a third party authorised officer, the Secretary must ask the person to show cause why the suspension should not take place. A revocation must not take effect before the day after any response to the request is received by the Secretary, or 14 days after the notice to show cause was given (whichever occurs first).

Subclause 296(4) will provide the Secretary with power to vary the period of a suspension by written notice to the person, however the total period of the suspension must not be more than 12 months.

A note will be included at the end of subclause 296(4) that will advise the reader that a decision to extend the period of a suspension of a person’s authorisation as a third party authorised officer is a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. This will be because extending the suspension of an authorisation of a third party authorised officer may have an adverse financial impact for that person.

**Effect of suspension**

Subclause 296(5) will confirm that if a person’s authorisation is suspended, the person is taken not to be an authorised officer during the period of suspension. This means that the person cannot exercise any of the powers or perform any of the functions that they were authorised to undertake.

Two notes will be included at the end of subclause 296(5). Note 1 will provide that if a third party authorised officer’s authorisation is suspended, the Secretary may request the person to notify the Secretary of certain matters (see clause 299 of the Bill) or require an audit to be conducted in relation to the performance of functions and exercise of powers by the third party authorised officer (see clause 267 of the Bill). This will ensure that the Secretary is able to continue oversight of a third party authorised officer while they are suspended, particularly if the Secretary may be considering whether to revoke the suspension under subclause 296(6).

Note 2 will refer the reader to clause 408 of the Bill which may require the third party authorised officer to retain records even while they are suspended. This will ensure that necessary records are not destroyed by the third party authorised officer.

**Revocation of suspension**

Subclause 296(6) will enable the Secretary to revoke a suspension of a person’s authorisation by written notice to the person if, for example, the reasons for the suspension no longer exist.

A note will be included at the end of subclause 296(6) that will provide that for the purpose of deciding whether to revoke the suspension, the Secretary may request the person to notify the Secretary of certain events and will refer the reader to clause 299 of the Bill.

**Clause 297 Revocation of authorisation**

Subclause 297(1) will enable the Secretary to revoke the authorisation of a person as an authorised officer at any time and for any reason, however it must be in writing. This power will also extend to a person to whom a suspension is in effect under clause 296 or 298C of the Bill.
A note will be included at the end of subclause 297(1) that will advise the reader that a decision made under subclause 297(1) in relation to a third party authorised officer is a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. This will be because revoking an authorisation of a third party authorised officer may have an adverse financial impact for that person. Any dispute arising from the revocation of an authorisation for an authorised officer who is a Commonwealth, State or Territory officer or employee would be managed in accordance with the legislation under which those persons are engaged.

Subclause 297(2) will provide that if a person has been given a show cause notice under subclause 298(3) of the Bill, before any revocation takes effect for a third party authorised officer, the Secretary must ask the person to show cause why the revocation should not take place. A revocation must not take effect before the day after any response to the request is received by the Secretary, or 14 days after the notice to show cause was given (whichever occurs first).

**Clause 298 Notice of proposed action must be given to third party authorised officer**

Subclause 298(1) will provide that the Secretary must not take action (the proposed action) under subclauses 295(1) of the Bill (varying an authorisation), 296(1) of the Bill (suspending an authorisation) or 297(1) of the Bill (revoking an authorisation) in relation to a third party authorised officer, unless the Secretary has given the person a written notice (in accordance with subclause 298(3)) requesting that the person show cause why the proposed action should not be taken.

However, subclause 298(2) will provide that the requirement to give a notice to show cause under subclause 298(1) will not apply if the Secretary reasonably believes that the need for the proposed action is serious and urgent. In these circumstances, the variation, suspension or revocation would take effect when the notice is given to the person. However, the rights of a third party authorised officer to seek a review of the decision would still operate.

Subclause 298(3) will provide that a notice to show cause given under subclause 298(1) must:

- state that the Secretary is considering taking the proposed action (that is, variation, suspension or revocation) and the reasons for the proposed action; and
- request the person to give the Secretary, within 14 days after the day the notice is given to the person, a written statement showing cause why the proposed action should not be taken; and
- include a statement setting out the person’s right to seek a review of a decision to take the proposed action.

Subclause 298(3) will reflect administrative law principles relevant to giving a person the right to have their say before a decision is made that may adversely impact on their interests.

**Subdivision B—Variation, suspension and revocation on application or request by third party authorised officer**

**Clause 298A Application for variation of authorisation**

Subclause 298A(1) will provide that a person who is a third party authorised officer may apply to the Secretary to:
• vary the functions that the person may perform, or the powers that the person may exercise, as a third party authorised officer under the Bill; or
• vary any conditions which the person’s authorisation is subject to, including imposing new conditions; or
• vary any other aspect of the person’s authorisation.

Requirements for applications

Subclause 298A(2) will provide that an application made under subclause 298A(1) must:

• if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner;
• if the Secretary has approved a form for making the application—include the information required by the form and be accompanied by any documents required by the form;
• include the information (if any) prescribed by the rules; and
• be accompanied by any documents prescribed by the rules.

The manner of the application approved by the Secretary could, for example, include the ability to make an application electronically.

Enabling the rules to prescribe any information or documents that must accompany an application will ensure that the Secretary has access to relevant information and documents available when considering an application. This flexibility will be necessary to accommodate the range of applications to which this provision may relate and the likelihood that there will be different information requirements in relation to each application.

A note will be included at the end of subclause 298A(2) that will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill. The note will clarify that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons providing false or misleading information or documents, which is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Subclause 298A(3) will provide that an application is taken not to have been made if the application does not comply with the requirements in subclause 298A(2). This will mean that, for example, the Secretary will not be required to make a decision on the application if it is incomplete.

Secretary must decide whether to make variation

Subclause 298A(4) will provide that if the Secretary receives an application made under subclause 298A(1) to make a variation, the Secretary must decide whether to make the variation or to refuse it.

A note will be included at the end of subclause 298A(4) that will advise the reader that a decision to refuse to make a variation under subclause 298A(4) is a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill. The note will also refer the reader to
clause 382 of the Bill, which will provide that a decision to refuse to make the variation is a reviewable decision (see Part 2 of Chapter 11) and that the Secretary must give the applicant written notice of the decision.

Subclause 298A(5) will provide that the Secretary may make the variation if the Secretary is satisfied, having regard to any matter the Secretary considers relevant that it is appropriate to make the variation.

Notice of decision

Subclause 298A(6) will provide that if the Secretary makes a variation in relation to the third party authorised officer’s authorisation, the Secretary must vary the person’s instrument of authorisation to include the variation and give the person the varied instrument of authorisation. This ensures that there is a record of what varied powers the third party authorised officer may exercise and functions that they may perform under their varied authorisation.

Clause 298B Additional or corrected information

Subclause 298B(1) will create an obligation on a person who has made an application to make a variation (under subclause 298A(1)) to provide additional or corrected information to the Secretary if the person becomes aware that the information provided in the application was incomplete or incorrect or a change prescribed by the rules occurs.

This provision will ensure that the Secretary has all relevant and correct information at hand in relation to an application so that the Secretary may make an informed decision in relation to the application.

Enabling the rules to prescribe a change for which it is necessary for a person to provide additional or corrected information will give the Secretary flexibility to determine the changes that may be relevant to the Secretary’s decision in relation to the application. The ability to prescribe these circumstances in the rules reflects the likelihood that the circumstances prescribed will change from time to time and will need to commence at short notice.

Subclause 298B(2) will set out the circumstances where the provision of additional or corrected information will be required. This will include where the information is relevant to the Secretary’s consideration of the application. Additional or corrected information that will not be relevant to the Secretary’s consideration of an application will not need to be provided.

Subclause 298B(2) will also require that a person who has made an application must give the Secretary the additional or corrected information as soon as practicable. Whether the information is provided ‘as soon as practicable’ will be determined on a case-by-case basis.

It is necessary for the Secretary to have the most up-to-date information to determine whether a particular application should be granted. The provision of information may lead the Secretary to take certain action, such as suspension of an export permit.

Two notes will be included at the end of subclause 298B(2). Note 1 will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill. The note will also clarify that a person may commit an offence or be
liable to a civil penalty if the person provides false or misleading information or documents. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents, which is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Note 2 will provide that clause 298B is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to an application and if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material will only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill, and will not result in criminal or civil proceedings against the person who provided the material.

Subclause 298B(3) will provide a civil penalty may be imposed in circumstances where a person is required to give additional or corrected information to the Secretary under subclause 298B(2) and they fail to comply with that requirement.

Subclause 298B(3) will provide that a person will contravene subclause 298B(3) if:
- the person is required to give information to the Secretary under subclause 378(2); and
- the person fails to comply with the requirement.

Subclause 298B(3) will prescribe a civil penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 298B. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 298B(3) will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to conduct that will be inconsistent with the requirements of this clause. It will be necessary for the Secretary to have relevant and correct information to determine whether the application that has been made should be accepted or rejected. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

Clause 298C Request for suspension of authorisation

Subclause 298C(1) will provide that a person who is a third party authorised officer may request the Secretary to suspend the person’s authorisation. This request must be in writing.

Subclause 298C(2) will provide that if the Secretary receives a request from a person under subclause 298C(1), the Secretary must, by written notice, suspend the person’s authorisation as requested, with effect on the day specified in the notice.

Effect of suspension
Subclause 298C(3) will confirm that if a person’s authorisation is suspended, the person is taken not to be a third party authorised officer during the period of suspension. This means that the person cannot exercise any of the powers or perform any of the functions that they were authorised to undertake.

Two notes will be included at the end of subclause 298C(3). Note 1 will provide that if a third party authorised officer’s authorisation is suspended, the Secretary may request the person to notify the Secretary of certain events (see clause 299 of the Bill) or require an audit to be conducted in relation to the performance of functions and exercise of powers by the third party authorised officer (see clause 267 of the Bill). This will ensure that the Secretary is able to continue oversight of a third party authorised officer while they are suspended, particularly if the Secretary may be considering whether to revoke the suspension under subclause 296(6).

Note 2 will refer the reader to clause 408 of the Bill which may require the third party authorised officer to retain records even while they are suspended. This will ensure that necessary records are not destroyed by the third party authorised officer.

Request to revoke suspension

Subclause 298C(4) will provide that if a person’s authorisation as a third party authorised officer is suspended, the person may request the Secretary, in writing, to revoke the suspension.

Subclause 298C(5) will provide that if the Secretary receives a request from a third party authorised officer under subclause 298C(4), the Secretary may:

- revoke the suspension by written notice, if the Secretary is satisfied there is no reason why the suspension should not be revoked; or
- in any other case:
  - suspend the person’s authorisation on the Secretary’s initiative (under subclause 296(1)); or
  - revoke the person’s authorisation on the Secretary’s initiative (under subclause 297(1)).

Two notes will be included at the end of subclause 298C(5) to assist the reader. Note 1 will provide that for the purpose of deciding whether to revoke the suspension, the Secretary may request the person to notify the Secretary of certain matters and will refer the reader to clause 299 of the Bill. Note 2 will provide that a decision to suspend or revoke the approved arrangement will be a reviewable decision, and will refer the reader to Part 2 of Chapter 11 of the Bill.

Clause 298D Request for revocation of authorisation

Subclause 298D(1) will provide that a person who is a third party authorised officer, including a person whose approval is suspended under clause 296 or 298C, may request the Secretary, in writing, to revoke the person’s authorisation as a third party authorised officer.

Subclause 298D(2) will provide that if the Secretary receives a request from a person under subclause 298D(1), the Secretary must, by written notice, revoke the person’s authorisation as requested, with effect on the day specified in the notice.
Subdivision C—Other provisions

Clause 299 Secretary may request notification of certain events by suspended third party authorised officer

As noted above under subclause 296(5) of the Bill, during the period of suspension of a third party authorised officer under clauses 296 or 298C of the Bill, certain obligations will continue, including the obligation to notify the Secretary of certain events that may impact on their capacity to remain an authorised officer.

Subclause 299(2) will provide that for the purpose of deciding whether to revoke the suspension, the Secretary may request (in writing) that the person notify the Secretary (in writing within 14 days after the request is made):

- of any notifiable event in relation to the person that has occurred since the person’s authorisation was suspended; or
- if no notifiable event in relation to the person has occurred since the person’s authorisation was suspended—of that fact.

The requirement to notify the Secretary that a notifiable event has or has not occurred will be necessary to prevent a person from avoiding advising the Secretary of a notifiable event. A notification to the Secretary as to whether or not a notifiable event has occurred may cause the Secretary to take action in relation to the suspension of a third party officer. This may include, for example, the Secretary deciding to vary the period of a suspension under subclause 296(4) of the Bill, revoking an authorisation under clause 297 of the Bill (in the case that a notifiable event has occurred), or deciding to revoke a suspension under subclause 296(6) of the Bill (in the event that no notifiable event has occurred).

A note will be included at the end of subclause 299(2), which will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 137.1 and 137.2 of the Criminal Code and clauses 368 and 369 of the Bill). The note will clarify that a person may commit an offence or be liable to a civil penalty if the person knowingly provides false or misleading information or documents which may compromise a decision of the Secretary to, for example, revoke a suspension of a third party authorised officer. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents which is inconsistent with the requirements of the Bill and that could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Subclause 299(3) will provide that each of the following will be notifiable events for the purposes of subclause 299(2):

- the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, an Australian law for a contravention involving fraud or dishonesty;
- the person acquired an interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer;
- a pecuniary penalty imposed on the person for a contravention of a provision of the Bill or the Biosecurity Act became due and payable;
- a liability of the person for an amount under a Commonwealth law prescribed by the rules became due and payable.
Enabling the rules made under clause 432 of the Bill to provide when a debt under a prescribed law becomes a notifiable event will enable flexibility in relation to the different categories of third party authorised officers. For example, it may be relevant to notify the Secretary of a liability under another law of the Commonwealth, where that liability may impact on the ability or suitability of the third party authorised officer to effectively undertake their functions as a third party authorised officer.

**Division 4—Functions and powers**

**Clause 300 Rules may confer functions or powers on authorised officers**

Clause 300 will enable the rules to confer functions or powers on authorised officers, or a class of authorised officers, that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of the Bill. An example will be provided at the end of clause 300 to assist the reader. The example will explain that the rules may confer on a specified class of authorised officers the power to pass a specified kind of prescribed goods as fit for human consumption.

Enabling the rules made under clause 432 of the Bill to confer functions or powers on authorised officers will give the Secretary the ability to ensure an authorised officer can undertake all necessary activities in relation to the export of goods throughout the supply chain.

As with all functions that may be performed or powers that may be exercised by an authorised officer, it is only those functions and those powers that a particular person or class of persons will be empowered to undertake that will be able to be carried out by that person. That is, a function or power conferred on an authorised officer under clause 300 will only be able to be performed or exercised by the officer if it is specified in the officer’s instrument of authorisation under subclause 301(1) of the Bill.

**Clause 301 Functions and powers of authorised officers**

Subclause 301(1) will provide that an authorised officer only has the functions and powers that are set out in their instrument of authorisation. For example, if an authorised officer is to undertake audit functions, they must be conferred by the powers and functions set out in Part 1 of Chapter 9 of the Bill; and if they are to undertake compliance and enforcement functions, they must be conferred by the powers and functions set out in Chapter 10 of the Bill.

In the absence of a conferral through an instrument of authorisation, merely being authorised as an authorised officer will not enable that person to perform any functions or exercise any powers.

Note 1 at the end of subclause 301(1) will advise the reader that the reference to this Act will include a reference to instruments made under this Act (see the definition of this Act in clause 12 of the Bill). The note will also refer the reader to clause 300 of the Bill which will provide for the rules to confer functions or powers on an authorised officer.

Note 2 will advise that an authorised officer may only perform a function, or exercise a power, if that function or power is specified in the authorised officer’s instrument of authorisation.
Secretary may give directions to authorised officer

Subclause 301(2) will enable the Secretary to give a direction to any authorised officer about the performance of the authorised officer’s functions or exercise of powers. For example, directions may relate to workplace safety issues.

A note will be included at the end of subclause 301(2) to refer the reader to clause 309 of the Bill which will set out the general provisions relating to directions.

Commonwealth authorised officer may give directions to third party authorised officers

Subclause 301(3) will enable a Commonwealth authorised officer to give a direction to a third party authorised officer, or a class of third party authorised officers, about the performance of their functions or the exercise of their powers. This will enable proper oversight and control of third party authorised officers to ensure that all functions are performed and powers exercised in an appropriate manner.

A note will be included at the end of subclause 301(3) to refer the reader to clause 309 of the Bill which will set out the general provisions relating to directions.

Authorised officer must comply with directions

Subclause 301(4) will require an authorised officer, in performing their functions or exercising their powers under the Bill, to comply with any directions given by either the Secretary under subclause 301(2) or by other Commonwealth authorised officers under subclause 301(3). Clause 302 of the Bill will make it an offence for a third party authorised officer to fail to comply with a direction.

Clause 302 Third party authorised officer must not contravene direction

Clause 302 will prescribe a fault-based offence and a civil penalty that will apply if a third party officer is given a direction under subclauses 301(2) of the Bill (direction from the Secretary) or 301(3) of the Bill (direction from a Commonwealth authorised officer) and the third party officer fails to comply with the direction. There is no offence for Commonwealth, State or Territory authorised officers as their respective codes of conduct and legislation such as the PGPA Act are considered sufficient to deter this kind of conduct.

Subclause 302(1) will provide that a person will commit a fault-based offence if:

- the authorised officer is given a direction under subclauses 301(2) or 301(3) of the Bill;
- the authorised officer engages in conduct; and
- the conduct contravenes the direction.

The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both).

Subclause 302(2) will provide that a third party authorised officer will be liable to a civil penalty of 240 penalty units if the officer contravenes subclause 301(4). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention.
The civil penalty provided for in subclause 302(2) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent for a third party authorised officer to contravene a direction, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty for the fault-based offence and the civil penalty reflects the serious consequences that may result from conduct that contravenes this clause. Due to the range of functions and powers that a third party authorised officer may exercise under the Bill, the contravention of a direction could undermine the integrity of the regulatory framework and ultimately result in the export of goods that do not comply with legislative and importing country requirements. The penalty provisions are intended to provide an effective deterrent to this conduct. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Clause 303 Certain authorised officers may charge fees

Subclause 303(1) will provide that State, Territory and third party authorised officers may charge fees for the performance of functions or exercise of powers that they provide under the Bill. This will include the provision of services and will enable such authorised officers to recover the costs (whether on a cost-recovery basis or a commercial basis) for providing those services.

A note will be included at the end of subclause 303(1) that will provide that fees may also be charged in relation to the performance of functions or the exercise of powers by, or on behalf, of a Commonwealth authorised officer and will refer the reader to clause 399 of the Bill.

Subclause 303(2) will prescribe that a fee must not be such as to amount to taxation to address the constitutional limitation on the imposition of a tax.

Clause 304 Direction to assist persons performing functions etc. under this Act

Subclause 304(1) will provide that an authorised officer, who is performing functions or exercising powers under the Bill, may direct a relevant person to provide reasonable assistance if the authorised officer reasonably believes the relevant person is able to. The authorised officer must reasonably believe that a person is able to provide reasonable assistance or facilities to the authorised officer, or to any other person who is performing functions or exercising powers under the Bill.

A note will be included at the end of subclause 304(1) to refer the reader to clause 309 of the Bill which will set out the general provisions relating to directions.

Subclause 304(2) will provide that a person will commit a fault-based offence if:

- the person is given a direction under subclause 304(1); and
- the person engages in conduct; and
- the conduct contravenes the direction.

The fault-based offence will be subject to a penalty of imprisonment for six months or a fine of 30 penalty units (or both) for an individual. The maximum fine for a body corporate for a contravention will be 150 penalty units.
Subclause 304(3) will provide that a person will be liable to a civil penalty of 60 penalty units if the person contravenes a direction given under subclause 304(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 304(3) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty for the fault-based offence and the civil penalty reflects the consequences that may result from conduct that contravenes this clause. Authorised officers will require reasonable assistance and facilities to exercise a range of functions and powers under the Bill. This includes for example, assistance conducting an audit. Failure to provide reasonable assistance or facilities could undermine the integrity of the regulatory framework provided for by the Bill, and ultimately result in the export of goods that do not comply with legislative and importing country requirements. The penalty provisions are intended to provide an effective deterrent to this conduct. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 305  Direction to deal with non-compliance with the requirements of this Act etc.**

Clause 305 will enable an authorised officer to give a direction to a relevant person to deal with non-compliance with the Bill, and will describe the grounds for giving a direction. Clause 305 will also provide a civil penalty if a person fails to comply with a direction.

*Grounds for giving direction*

Subclause 305(1) will provide that an authorised officer will be able to give a direction to a relevant person identified in an item of Column 1 on the grounds identified in Column 2 of that item in the table titled ‘Directions to deal with non-compliance with the requirements of this Act etc’. Column 1 of the table will prescribe who is a relevant person for giving a direction and Column 2 of the table will describe the grounds on which a direction may be given. Who the relevant person will be will depend on the nature of the direction that will be given. Before giving a direction, the authorised officer must reasonably believe that the grounds set out in Column 2 exist.

The directions that may be given are generally to ensure:

- compliance with conditions;
- compliance with a requirement of the Bill;
- the integrity of particular prescribed goods;
- that particular prescribed goods meet importing country requirements; and
- anything else prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances in which an authorised officer may give a direction to a relevant person provides the Secretary with the
flexibility to determine when it is appropriate to do so. These circumstances may arise for a range of technical and administrative reasons and are likely to change from time to time and may need to commence at short notice.

**Content of direction**

Subclause 305(2) will require that a direction given to a relevant person under subclause 305(1) must require the relevant person to take a specified action (which may include ceasing to carry out export operations), within a specified period, in order to address the grounds that required the direction to be given.

Two notes will be included at the end of subclause 305(2). Note 1 will confirm that an authorised officer may give more than one direction relating to a ground identified in Column 2 (see subsection 33(1) of the Acts Interpretation Act).

Note 2 will refer the reader to clause 309 of the Bill which will set out general provisions relating to directions.

Subclause 305(3) will limit the power for an authorised officer to give a direction under subclause 305(1) to cease export operations only when the authorised officer reasonably believes that:

- one or more of the following grounds exists:
  - the goods do not comply, or it is likely that the goods do not comply, with a requirement of the Bill that applies in relation to the goods; or
  - the goods do not meet, or it is likely that the goods do not meet, an importing country requirement relating to the goods;
  - the integrity of the goods cannot be ensured;
  - a ground prescribed by the rules; and
- that ground, or those grounds, cannot be dealt with other than by ceasing the relevant export operations.

The limited grounds on which an authorised officer will be able to give a direction to cease export operations will reflect the serious nature of such a direction and the consequences that it will have to an exporter.

Enabling the rules made under clause 432 of the Bill to prescribe additional grounds provides the Secretary with the flexibility to determine when it is appropriate to do so. These circumstances may arise for a range of technical and administrative reasons and may be, for example, specific to a kind of goods or a kind of export operation.

Subclause 305(4) will provide that if a direction under subclause 305(1) is given in writing, it will be required to advise the relevant person that they may be liable to a civil penalty if the person fails to comply with the direction.

Subclause 305(5) will provide that a person will be liable to a civil penalty of 60 penalty units if the person contravenes a direction given under subclause 305(1). This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for not complying with a direction. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.
This civil penalty provision is intended to provide an effective deterrent to conduct which would contravene this clause. Contravening a direction from an authorised officer or the Secretary is a serious act, and may undermine the integrity of the regulatory framework provided for by the Bill.

The penalty in subclause 305(5) will be subject to certain exceptions. Subclause 305(6) will provide that the civil penalty will not apply if:

- the direction was given in writing and the direction did not include the statement referred to in subclause 305(4); or
- the direction was given orally and the authorised officer did not take reasonable steps to inform the person that the person may be liable to a civil penalty for failing to comply with the direction.

A note will be included at the end of subclause 305(6) that will refer the reader to section 96 of the Regulatory Powers Act, which provides that the defendant bears an evidential burden in relation to the matters that will be set out in this subclause.

Subclause 305(7) will clarify that for the purposes of paragraph 305(6)(b) (oral direction) it will be sufficient if the following form of words is used: ‘You may be liable to a civil penalty if you fail to comply with this direction’. This will provide the person with an understanding of the consequences of failing to comply with a direction.

**Division 5—Miscellaneous**

**Clause 306 Identity cards**

Subclause 306(1) will enable the Secretary to issue an identity card to any of the following:

- an authorised officer;
- an approved auditor;
- any other person who performs functions or duties or exercises powers under the Bill and who is prescribed by the rules.

Subclause 306(2) will provide that the identity card issued under subclause 306(1) must be in a form approved by the Secretary and contain a recent photograph of the person. What is recent is not defined, however the photograph should be sufficiently recent to enable someone seeing the card to identify the person holding the card as the person in the photograph.

Subclauses 306(3) and 306(4) will require an authorised officer or an approved auditor who have been issued an identity card under subclause 306(1) to carry the identity card at all times when performing functions, exercising powers or duties, or carrying out an audit under the Bill. However subclause 306(5) will provide that an approved officer or authorised auditor need not carry an identity card in the circumstances prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances in which an authorised officer or an approved auditor may not need to carry an identity card provides the Secretary with the flexibility to determine when it is appropriate to do so. These circumstances may arise for a range of technical and administrative reasons and may change from time to time and may need to commence at short notice. Enabling the rules to prescribe these circumstances will enable the Secretary to quickly respond to the change in circumstances.
Clause 307  **Offence—failure to return identity card**

Clause 307 will provide that a strict liability offence may be imposed in circumstances where a person fails to return an identity card.

Subclause 307(1) will provide that a person will contravene subclause 307(1) if:

- the person has been issued with an identity card under subclause 306(1) of the Bill; and
- the person ceases to be a person referred to in paragraphs 306(1)(a), (b) or (c) of the Bill; and
- the person does not, within 14 days after so ceasing, return the person’s identity card to the Secretary.

However, subclause 307(2) will provide that subclause 307(1) will not apply if an authorised officer has their authorisation suspended or if the identity card was lost or destroyed. Paragraph 307(2)(a) seeks to clarify that an authorised officer who has been suspended does not commit an offence if they fail to return their identity card, which acknowledges in some instances, a suspension of a person’s authorisation will be revoked and the person will continue to be an authorised officer.

A note will be included at the end of subclause 307(2) to refer the reader to subsection 13.3(3) of the *Criminal Code*. The note will clarify that a defendant will bear the evidential burden in relation to a matter in subclause 307(2). The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

Subclause 307(3) will provide that a person will commit a strict liability offence if the person contravenes subclause 307(1). The strict liability offence will be subject to a penalty of one penalty unit and is not punishable by imprisonment.

This penalty is intended to encourage a person to return their identity card. An unreturned card could enable someone who has no authority to enter premises to trespass or undertake activities for which they are not authorised.

**Clause 308  Certain goods or services must not be provided to, or received by, authorised officers**

Clause 308 will provide that the occupier of a registered establishment must not provide goods or services to an authorised officer, and will be liable to an offence for doing so. An authorised officer may also be liable to an offence for receiving goods and services from an occupier. Goods, for the purpose of this clause, includes any article, substance or commodity. The offence aims to preserve the integrity and impartiality of authorised officers.
Occupier of registered establishment must not provide goods or services to authorised officer

Subclause 308(1) will provide that the occupier of a registered establishment will be liable to an offence if the occupier provides goods or services to an authorised officer.

The offence prescribed by clause 308(1) will be subject to a penalty of imprisonment for 12 months or a fine of 60 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 308(1) will be 300 penalty units.

An offence under subclause 308(1) is subject to two exceptions. Subclause 308(2) will provide that the offence under subclause 308(1) does not apply if the Secretary has approved, in writing, the provision of the goods and services to the authorised officer. Subclause 308(3) will provide that subclause 308(1) does not apply in relation to goods or services that are provided to a third party authorised officer under a contract of employment or a contract for services.

A note to subclauses 308(2) and 308(3) will provide that a defendant bears an evidential burden in relation to the matters in these subclauses (see subsection 13.3(3) of the Criminal Code).

Authorised officer must not receive goods or services from occupier of registered establishment

Subclause 308(4) will provide that an authorised officer must not receive goods or services from the occupier of a registered establishment.

The offence prescribed by subclause 308(4) will be subject to a penalty of imprisonment for 12 months or a fine of 60 penalty units (or both).

An offence under subclause 308(4) is subject to two exceptions. Subclause 308(5) will provide that 308(4) does not apply if the Secretary has approved, in writing, the provision of the goods and services to the authorised officer. Subclause 308(6) will provide that subclause 308(4) does not apply in relation to goods or services that are provided to a third party authorised officer under a contract of employment or a contract for services.

A note to subclauses 308(5) and 308(6) will provide that a defendant bears an evidential burden in relation to the matter in these subclauses (see subsection 13.3(3) of the Criminal Code).

Definition of goods

Subclause 308(7) will provide that for the purposes of this clause, goods includes any article, substance or commodity.

This offence is intended to provide an effective deterrent to conduct which would contravene this clause. Authorised officers must remain independent and impartial in order to effectively carry out their powers and functions under the Bill. Receiving goods and services from an occupier would affect this impartiality and could undermine the integrity of the regulatory framework provided for by the Bill. This could ultimately result in the export of goods that do not comply with legislative and importing country requirements. The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which
will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

The general bribery and related offences in Part 7.6 of Criminal Code will also apply to authorised officers. However, clause 308 will operate more broadly than the Criminal Code offences, as it will capture an occupier’s provision of any goods or services to an authorised officer (and their receipt), regardless of whether the occupier intended to influence the officer in the performance of their functions. This is to preserve the independence and impartiality of authorised officers.

**Clause 309 General provisions relating to directions**

Subclause 309(1) will provide that a person who can give a direction under the Bill may give the direction orally or in writing (including by electronic means).

**Written copy of oral direction must be given**

Subclause 309(2) will require a person who gave an oral direction to also give the direction in writing, as soon as practicable after giving the direction. However, subclause 309(3) will provide that a failure to reduce a direction to writing will not invalidate the oral direction.

A note will be included at the end of subclause 309(3) to highlight that if an authorised officer fails to comply with subclause 309(2), the Secretary may suspend or revoke their authorisation under Division 3 of Part 5 of Chapter 9.

The expression ‘as soon as practicable’ is not defined and will depend on the circumstances of each case and may include as soon as opportunity arose for the person to write out the direction. The failure to comply with this requirement does not affect the validity of the direction and a relevant person must still comply with an oral direction.

**Directions are not legislative instruments**

Subclause 309(4) will provide that a direction under the Bill will not be a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the Legislation Act. Subclause 309(4) will make a statement as to the law (that is, that instruments of approval are not legislative instruments) and will not create an actual exemption to that Act.

**Inconsistent directions**

Subclause 309(5) will provide that where there are two directions and one is provided later in time, the later direction will override the earlier direction to the extent of any inconsistency.

Subclause 309(6) will provide that where there are two directions, one given by a State, Territory or a third party authorised officer and the other direction given by a Commonwealth authorised officer, the direction by the Commonwealth authorised officer will prevail against the former to the extent of any inconsistency, irrespective of whether the direction is first or second in time. Subsection 33(3) of the Acts Interpretation Act enables a person to repeal or revoke an earlier direction.
PART 5—ACCREDITED VETERINARIANS AND APPROVED EXPORT PROGRAMS

Division 1—Introduction

Clause 310  Simplified outline of this Part

Clause 310 will provide for a simplified outline of Part 5 of Chapter 9 of the Bill, which will provide for matters in relation to approved programs of export operations and accredited veterinarians. These include provisions that will enable the Secretary to approve programs of export operations to be carried out by an accredited veterinarian, or an authorised officer, for the purpose of ensuring the health and welfare of eligible live animals or health and condition of eligible animal reproductive material. These also include provisions that will enable the rules to make provisions for and in relation to programs of export operations. The Part will also deal with directions that may be given to an authorised officer and will create a number of offences and civil penalty provisions.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 5 of Chapter 9 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Approved export programs

Clause 311  Approved export programs

Clause 311 will provide that the Secretary may approve programs of export operations to be carried out by an accredited veterinarian, or an authorised officer, provide examples of types of export operations and when they may be different and will enable rules to be made in relation to approved programs of export operations.

Subclause 311(1) will provide that the Secretary may, in writing, approve programs of export operations to be carried out by an accredited veterinarian, or an authorised officer, for the purpose of ensuring the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material. Enabling the Secretary to deal with these issues will provide the necessary flexibility to address the changing requirements of overseeing the export of eligible live animals and eligible animal reproductive material. These changing requirements may arise for a range of technical and administrative reasons and will change from time to time and will need to commence at short notice. This will enable the Secretary to quickly respond to reflect the change in circumstances and requirements. A program of export operations will provide the guidelines for how an accredited veterinarian is to oversee the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material being exported. It will cover what export operations will be undertaken and how they will be carried out.

Subclause 311(2) will provide examples of the types of export operations that may be carried out under a program of export operations and provides examples of situations when the export operations may differ. The types of export operations:

- may include, but are not limited to, any of the following:
  - monitoring the health and welfare of eligible live animals or the health and condition of eligible animal reproductive material;
o examining, testing or treating eligible live animals or eligible animal reproductive material;

o keeping records of the implementation of the program;

o making declarations attesting to the completion of the requirements of the program;

o otherwise reporting on the implementation of the program;

o any other matter prescribed by the rules; and

• may differ depending on any of the following:

o the country to which the eligible live animals or eligible animal reproductive material is to be exported;

o the kind of eligible live animals or eligible animal reproductive material involved;

o the method by which the eligible live animals or eligible animal reproductive material are to be transported; or

o any other relevant matter.

Subclause 311(3) will provide that it is possible to have more than one approved export program covering the same export operations by the same exporter. Subclause 311(3) will provide that the Secretary may, under subsection (1):

• approve a program of export operations on application by a person who wishes to export eligible live animals or eligible animal reproductive material, or on the Secretary’s own initiative; and

• approve more than one program of export operations to be carried out in relation to eligible live animals or eligible animal reproductive material to be exported by a person.

Subclause 311(4) will provide that the rules may make provisions for and in relation to:

• matters relating to the approval of programs of export operations referred to in subclause 311(1);

• the implementation, variation, suspension and revocation of approved export programs; and

• dealing with inconsistencies between approved export programs that relate to the same export operations.

Subclause 311(4) will provide flexibility in determining how to deal with inconsistencies that may arise when there are two or more approved export programs that cover some or all of the same activities.

Subclause 311(5) will enable the rules to provide for:

• the giving of directions to a person who wishes to export eligible live animals or eligible animal reproductive material in relation to the implementation of an approved export program; and

• the publishing by the Secretary of records and reports made by accredited veterinarians and authorised officers in relation to approved export programs.

Enabling the rules made under clause 432 of the Bill to deal with the matters that will be listed in subclauses 311(3) and 311(4) will allow specific approved export programs to be made in relation to a particular importing country and a particular type of live animal or
animal reproductive material that is being exported. This will allow the Secretary to quickly respond to reflect the changes in circumstances and requirements.

**Clause 312  Accreditation of veterinarians**

Subclause 312(1) will enable rules to establish a system for accrediting veterinarians for the purpose of carrying out export operations in an approved export program. Subclause 312(2) will provide examples of what these rules may cover. This will be:

- requirements that must be met for accreditation;
- applications for accreditation; the period and conditions that relate to the accreditation;
- conditions of an accreditation;
- variation, suspension, or revocation of accreditation; and
- records and reporting requirements for accredited veterinarians.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances for accrediting veterinarians provides the Secretary with the flexibility to determine when it is appropriate to accredit a particular person and the ongoing management and supervision of that veterinarian, including being able to suspend or revoke an accreditation.

**Clause 313  Secretary may direct authorised officers to carry out certain export operations in approved export program**

Subclause 313(1) will enable the Secretary to direct an authorised officer to undertake some or all of the export operations in an approved export program. This will be irrespective of whether the approved export program actually requires the authorised officer to carry out those export operations. For example, the Secretary may give a direction to an authorised officer to carry out export operations in relation to the live animals because the Secretary is not satisfied with the actions of the accredited veterinarian, an accredited veterinarian is unavailable, or an importing country requires the presence of a Commonwealth authorised officer to carry out the approved export program.

A note will be included at the end of subclause 313(1) to refer the reader to clause 309 of the Bill for general provisions relating to directions.

Subclause 313(2) will require the Secretary to notify (in writing) the person whose export operations are affected by the direction given under subclause 313(1). This will inform the person that, notwithstanding the wording of the approved export program, an authorised officer will be undertaking the export operation and not the accredited veterinarian. This will also provide the exporter with the knowledge that an authorised officer will be on the voyage.

**Clause 314  Secretary may direct authorised officer to monitor or review export operations in approved export programs**

Clause 314 will assist in maintaining the integrity of the scheme relating to accredited veterinarians and export operations undertaken in approved export programs.

Subclause 314(1) will enable the Secretary to direct an authorised officer to monitor or review export operations in approved export programs carried out by accredited veterinarians, or export operations in approved export programs carried out by persons who export eligible live animals or eligible animal reproductive material.
Two notes will be included at the end of subclause 314(1). Note 1 will refer the reader to subclause 267 of the Bill which will enable the Secretary to require an audit to be conducted in relation to the performance of functions and the exercise of powers under the Bill by an accredited veterinarian.

Note 2 will refer the reader to subclause 309 of the Bill for general provisions relating to directions.

Subclause 314(2) will provide that if a direction is given to an authorised officer under subclause 314(1) and the authorised officer identifies a deficiency in export operations in an approved export operation carried out by an accredited veterinarian, the authorised officer may, in writing, direct the accredited veterinarian to remedy the deficiency within such reasonable period as is specified in the direction.

The term ‘deficiency’ is not defined; however, it would include situations where the authorised officer considers that the actions of the accredited veterinarian are incomplete, insufficient or inadequate.

A note will be included under subclause 314(2) advising that an accredited veterinarian may commit an offence if the veterinarian fails to comply with a direction (see clause 317 of the Bill).

Subclause 314(3) will prescribe that a written direction given under subclause 314(2) to an accredited veterinarian must describe the deficiency and state that it is an offence under clause 317 of the Bill if the accredited veterinarian fails to comply with the direction. The purpose of this is to make sure the accredited veterinarian is aware of the seriousness of failing to comply with the direction. For example, the direction could be to remedy the deficiency. If the accredited veterinarian fails to remedy the deficiency within the period, they may commit an offence under clause 317 of the Bill.

**Division 3—Offences and civil penalty provisions**

**Clause 315**

**Offence—person other than accredited veterinarian or authorised officer carrying out export operations in approved export program**

Subclause 315(1) will provide that a veterinarian commits an offence if:

- the veterinarian carries out export operations that are in an approved export program;
- the veterinarian is reckless as to whether the export operations are actually in an export program; and
- the veterinarian is not an accredited veterinarian or authorised officer who has been directed under subclause 313(1) of the Bill to carry out the export operations.

Subclause 315(2) will provide that strict liability will apply to the elements of the offence in paragraph 315(1)(a) (that the person carries out export operations in an approved export program) and paragraph 315(1)(c) (that the person is not an accredited veterinarian or an authorised officer who has been directed under subclause 313(1) of the Bill to carry out the export operations).

The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the
defendant (see section 9.2 of the Criminal Code). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The offence prescribed by clause 315(1) will be subject to a penalty of 50 penalty units and is not punishable by imprisonment.

This offence is intended to provide an effective deterrent to conduct that would contravene this clause. The integrity of an approved export program may be compromised if a veterinarian carries out export operations which should in fact be carried out by an accredited veterinarian or an authorised officer. The penalty is necessary to ensure that approved export programs are carried out in accordance with the objects of the Bill and to ensure that the health and welfare of eligible live animals and health and condition of eligible animal reproductive material is not compromised during export operations.

Clause 316 Strict liability offence—failure to keep records or provide reports in relation to approved export program

Clause 316 will provide that an accredited veterinarian commits a strict liability offence if the accredited veterinarian is required by the rules to keep records or provide reports in connection with an approved export program and they contravene this requirement.

Enabling the rules made under clause 432 of the Bill to prescribe the circumstances in which an accredited veterinarian is required to keep records or provide reports provides the Secretary with the flexibility to determine when this is appropriate. This may depend, for example, on the place of export or kind of prescribed good.

The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The offence prescribed by clause 316 will be subject to a penalty of 50 penalty units and is not punishable by imprisonment.

This offence is intended to provide an effective deterrent to conduct that would contravene this clause. The consequences of failing to comply with record keeping and reporting requirements can be significant. For example, if reports are required from an accredited veterinarian who accompanies live animals on an overseas journey and they fail to provide the reports, the Government may not be aware of animal health or welfare problems that may have arisen on the journey in time to take effective action.
In addition, if the Government is required to certify to an importing country that certain tests required by the importing country have been undertaken and this certification is based on the information provided by an accredited veterinarian in a report, then the Government needs to be able to verify the information by checking the records held by that veterinarian. The integrity of the certification system is undermined if the Government cannot verify the information provided by accredited veterinarians.

Further, the Government’s ability to make decisions at crucial points in the export chain often depends on the information supplied by accredited veterinarians. The Government therefore needs to be confident that it will be able to obtain reports from accredited veterinarians when required and that it will be able to verify the information provided in the reports by checking the records held by accredited veterinarians.

**Clause 317**  
**Strict liability offence—failure to remedy deficiency in carrying out approved export program**

Clause 317 will provide that an accredited veterinarian will commit a strict liability offence if an accredited veterinarian fails to comply with a direction given by an authorised officer under subclause 314(2) of the Bill. Subclause 314(2) of the Bill will provide that an authorised officer may direct an accredited veterinarian to remedy deficiencies in export operations carried out in an approved export program within a reasonable period.

This will be a strict liability offence. The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The offence prescribed by clause 317 will be subject to a penalty of 50 penalty units, and is not punishable by imprisonment.

This offence is intended to provide an effective deterrent to conduct that would contravene this clause. The consequences of failing to remedy a deficiency in an approved export program may be significant, and may compromise the integrity of the scheme relating to accredited veterinarians and export operations undertaken in an approved export program. The penalty is necessary to ensure that approved export programs are carried out in accordance with the objects of the Bill and to ensure that the health and welfare of eligible live animals and health and condition of eligible animal reproductive material is not compromised during export operations.

**Clause 318**  
**Offence—failure to ensure accredited veterinarian is engaged to carry out relevant export operations in approved export program**

Clause 318 will provide that a person will commit an offence if:

- the person carries out export operations;
• the person is reckless as to whether the export operations are in an approved export program; and
• the person does not ensure that, at all times when the approved export program applies, an accredited veterinarian is engaged to carry out the export operations in the program, other than export operations that an authorised officer is required to carry out in accordance with:
  o the program; or
  o a direction under subclause 313(1) of the Bill.

The offence prescribed by clause 318 will be subject to a penalty of imprisonment for 12 months or a fine of 60 penalty units (or both). The maximum fine for a body corporate for a contravention of clause 318 will be 300 penalty units.

This offence is intended to provide an effective deterrent to conduct that would contravene this clause. The integrity of the scheme relating to accredited veterinarians and export operations undertaken in an approved export program will be compromised if a person carries out export operations without engaging an accredited veterinarian or authorised officer (where required). Ultimately, this conduct may adversely affect the health and welfare of eligible live animals or the health and condition of animal reproductive material. The scheme for accredited veterinarians established in clause 311 of the Bill would only improve animal health and welfare outcomes in the livestock export trade if exporters take compliance with the scheme seriously.

The penalty for contravening clause 318 is higher than the penalty for the other offences dealing with accredited veterinarians set out in Division 3 of Part 5 of Chapter 9 of the Bill because it is a fault-based offence and applies to the person who has ultimate responsibility for exporting livestock.

Clause 319 Strict liability offence—contravening requirement to allow accredited veterinarian etc. to accompany eligible live animals during transport to overseas destination

Clause 319 will provide that a person commits a strict liability offence if:

• under the rules, the person is required to allow an accredited veterinarian or an authorised officer to accompany eligible live animals during their transport from Australia to their overseas destination in connection with an approved export program; and
• the person contravenes this requirement.

Enabling the rules made under clause 432 of the Bill to prescribe when an accredited veterinarian is required to accompany eligible live animals will give the Secretary flexibility to respond to changing needs in relation to the export of eligible live animals.

This will be a strict liability offence. The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the
persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The offence prescribed by clause 319 will be subject to a penalty of 50 penalty units and is not punishable by imprisonment. The maximum fine for a body corporate for a contravention of subclause 319 will be 250 penalty units.

This offence is intended to provide an effective deterrent to conduct that would contravene this clause. The failure to cooperate with the requirement for accredited veterinarians in approved export programs to accompany eligible live animals overseas may compromise the integrity of the scheme relating to accredited veterinarians and export operations undertaken in an approved export program. Ultimately, this conduct may adversely affect the health and welfare of eligible live animals or the health and condition of animal reproductive material. The scheme for accredited veterinarians established in clause 311 of the Bill would only improve animal health and welfare outcomes in the livestock export trade if exporters take compliance with the scheme seriously and comply with the requirements of the Bill.

Clause 320  Person must not obstruct or hinder accredited veterinarians etc. carrying out export operations in approved export program

Clause 320 will provide that penalties may be imposed in circumstances where a person obstructs or hinders an accredited veterinarian, or an authorised officer, while the accredited veterinarian or authorised officer are carrying out export operations in an approved export program.

Subclause 320(1) will provide that a person contravenes this subclause if the person obstructs or hinders an accredited veterinarian, or an authorised officer, in carrying out export operations in an approved export program. A note will be included at the end of subclause 320(1) that will provide that the physical elements of an offence against subclause 320(2) will be set out in subclause 320(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 320(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 320(1). The fault-based offence will be subject to a penalty of imprisonment for eight years or 480 penalty units or both. The maximum fine for a body corporate for a contravention of subclause 320(1) will be 2,400 penalty units.

The fault-based offence in subclause 320(2) is intended to complement the strict liability offence in subclause 320(3) of the Bill and to provide an effective deterrent to conduct that would contravene this clause. Obstructing or hindering an accredited veterinarian or authorised officer when they are performing functions set out in an approved export program may compromise the integrity of export operations undertaken in an approved export program. Ultimately, this conduct may adversely affect the health and welfare of eligible live animals or the health and condition of animal reproductive material. The scheme for accredited veterinarians established in clause 311 of the Bill will only improve animal health and welfare outcomes in the livestock export trade if exporters take compliance with the scheme seriously and comply with the requirements of the Bill.
The criminal penalty will represent an appropriate sanction and reflects the seriousness of the offence within the relevant legislative scheme for regulating the control of exports. The criminal penalties are necessary to achieve the legitimate objective of maintaining overseas market access for goods exported from Australia, complying with government or industry standards or requirements relating to the goods, ensuring the integrity of the goods and to give effect to Australia’s rights and obligations. Further, the penalties are reflective of the seriousness of the conduct and the risk that contravening behaviour may pose to human, plant and animal health, the environment and trade.

Subclause 320(3) will provide that a person will commit an offence of strict liability if the person contravenes subclause 320(1). The strict-liability offence will be subject to a penalty of 50 penalty units and is not punishable by imprisonment. The maximum fine for a body corporate for a contravention of subclause 320(1) will be 250 penalty units. The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

Subclause 320(4) will provide that a person will be liable to a civil penalty of 960 penalty units if the person contravenes subclause 320(1). This civil penalty provision is intended to complement the offence in subclause 320(2) and the strict liability offence in subclause 320(3) of the Bill. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 320(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 320(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 320(4) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalty provisions are intended to provide a deterrent to conduct that will be inconsistent with the requirements of, or conditions set out in, the Bill.

The penalty for the fault-based offence and the civil penalty will also reflect the consequences of a person obstructing or hindering an accredited veterinarian, or an authorised officer, in carrying out export operations in an approved export program, may have on human, animal or plant life or health, or compliance with an Australian law (other than the Bill). Conduct that contravenes the prohibition may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and so adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.
The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances. This will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 321** Strict liability offence—contravening requirement to provide reasonable facilities and assistance to accredited veterinarian etc.

Clause 321 will provide that a person will commit a strict liability offence for failing to provide reasonable facilities and assistance to an accredited veterinarian.

Subclause 321(1) will provide that if:

- an accredited veterinarian is engaged to carry out some or all of the export operations in an approved export program; or
- under subclause 313(1) of the Bill, the Secretary directs an authorised officer to carry out some or all of those export operations;

then the person who wishes to export the eligible live animals or eligible animal reproductive material to which the program relates must provide the accredited veterinarian or authorised officer with all reasonable facilities and assistance necessary to carry out the export operations.

Subclause 321(2) will provide that a person will commit a strict liability offence if the person is required to provide facilities and assistance under subclause 321(1) and the person fails to comply with that requirement.

This will be a strict liability offence. The prosecution is only required to prove the physical elements of the offence beyond reasonable doubt, and is not required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*). The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The offence prescribed by clause 321 will be subject to a penalty of 50 penalty units and is not punishable by imprisonment. The maximum fine for a body corporate for a contravention of subclause 321 will be 250 penalty units.

This offence is intended to provide an effective deterrent to conduct that would contravene this clause. The consequences of failing to provide all necessary equipment, access and support to accredited veterinarians or authorised officers may be significant, and may compromise the integrity of the scheme relating to accredited veterinarians and export operations undertaken in an approved export program. Ultimately, this conduct may adversely affect the health and welfare of eligible live animals or the health and condition of animal reproductive material. The scheme for accredited veterinarians established in clause 311 of the Bill would only improve animal health and welfare outcomes in the livestock export trade if exporters take compliance with the scheme seriously and comply with the requirements of the Bill.
Division 4—Extended geographical operation of offences

Clause 322

Extended geographical operation of offences

Clause 322 will provide that section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against any of the clauses between clause 315 and clause 321 of the Bill (that is, the offences in Division 3 of Part 5 of Chapter 5). This means that, in addition to the offences applying in Australia, the offences will apply in certain limited situations when the conduct occurs outside Australia when the defendant is an Australian citizen, body corporate or resident. For example, an accredited veterinarian who is an Australian citizen may commit an offence under clause 316 of the Bill if the veterinarian fails to keep the necessary records or make the necessary reports even when they are outside the Australian territory.

Chapter 10—Compliance and enforcement

PART 1—INTRODUCTION

Clause 323

Simplified outline of this Part

Clause 323 will provide a simplified outline of Part 1 of Chapter 10 of the Bill. Part 1 of Chapter 10 will provide for a modified definition of the term authorised officer for the purposes of Chapter 10 of the Bill, and for the purposes of any other provision of the Bill to the extent that it relates to Chapter 10. Chapter 10 will include functions, powers and duties that may be performed or exercised to address compliance with, and enforcement of, the provisions of the Bill.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 1 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Clause 324

Modified meaning of authorised officer

Clause 324 will modify the definition of the term authorised officer (see clauses 12 and 291 of the Bill) for the purposes of Chapter 10 of the Bill and any other provision of the Bill to the extent that it relates to Chapter 10 of the Bill. Subclause 324(1) will provide that, for the purposes of Chapter 10 of the Bill and those other provisions, an authorised officer will mean a Commonwealth authorised officer, or a State or Territory authorised officer, who satisfies the requirements determined by the Secretary under subclause 324(2).

Persons who are not Commonwealth, State or Territory authorised officers (known as third party authorised officers) will ordinarily be captured by the definition of the term authorised officer (see clause 12 and subclause 291(3) of the Bill). However, the effect of subclause 324(2) will be that references to the term authorised officer in Chapter 10 of the Bill, or in any other provision of the Bill to the extent that it relates to Chapter 10, will not include third party authorised officers. This will mean that a third party authorised officer will be unable to exercise or perform any of the regulatory powers, functions or duties set out under the Regulatory Powers Act or in Chapter 10 of the Bill. This is appropriate as third party authorised officers will not be officers or employees of a Commonwealth body or a State or Territory body.
Subclause 324 (2) will provide that the Secretary must determine, in writing, the training and qualification requirements for authorised officers in relation to the exercise of powers and performance of functions or duties under Chapter 10 of the Bill or under the Regulatory Powers Act. The power to determine the training and qualification requirements for authorised officers in these circumstances is necessary to ensure that those authorised officers are appropriately skilled prior to the exercise of powers or performance of functions or duties under Chapter 10 of the Bill or under the Regulatory Powers Act. This is particularly important given the nature of the powers and functions. Determinations under this subclause relate to administrative policy that will facilitate the requirement for authorised officers to have the training and qualifications necessary to perform the functions and exercise the powers set out in their instrument of authorisation.

Subclause 324(3) will provide that a determination made by the Secretary under subclause 324(2) will not be a legislative instrument for the purposes of the definition of the term legislative instrument provided for by section 8 of the Legislation Act. Subclause 324(3) will make a statement as to the law (that is, that determinations made by the Secretary under subclause 324(2) will not be legislative instruments) and will not create an actual exemption to that Act.

PART 2—MONITORING

Division 1—Introduction

Clause 325 Simplified outline of this Part

Clause 325 will provide a simplified outline of Part 2 of Chapter 10 of the Bill. Part 2 of Chapter 10 will trigger the standard monitoring powers set out in Part 2 of the Regulatory Powers Act. Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions of an Act or a legislative instrument have been, or are being, complied with. That Part also establishes a framework for monitoring whether information given in compliance, or purported compliance, with a provision of an Act or legislative instrument is correct.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 2 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Monitoring under Part 2 of the Regulatory Powers Act

Clause 326 Basic monitoring powers under Part 2 of the Regulatory Powers Act

Clause 326 will apply the standard monitoring powers under Part 2 of the Regulatory Powers Act to the provisions of the Bill. The Regulatory Powers Act provides for a standard suite of provisions in relation to monitoring and investigation powers, and also in relation to enforcement powers through the use of civil penalties, infringement notices, enforceable undertakings and injunctions. The Regulatory Powers Act only has effect where Commonwealth Acts are drafted or amended to trigger its provisions. Applying Part 2 of the Regulatory Powers Act to the Bill will remove the requirement to duplicate the monitoring powers provisions in the Bill.
Subsection 7(2) of the Regulatory Powers Act states that, in order for Part 2 of the Regulatory Powers Act to operate, a provision of an Act or legislative instrument must be made subject to monitoring under that Part. Subsection 7(2) also states that information given in compliance, or purported compliance, with a provision of an Act or legislative instrument must be made subject to monitoring under that Part, by another Act (a triggering Act). When a triggering Act applies Part 2 of the Regulatory Powers Act, it must identify any related provisions and the authorised applicant or applicants, the authorised person or persons, the issuing officer or officers, the relevant chief executive and the relevant court or courts that may exercise powers under that Part (see sections 10, 11, 12, 14, 15 and 16 of the Regulatory Powers Act).

Provisions subject to monitoring

Subclause 326(1) will provide that the provisions of the Bill will be subject to monitoring under Part 2 of the Regulatory Powers Act. This will ensure that Part 2 of that Act will be able to operate for the purposes of monitoring compliance with the provisions of the Bill.

Two notes will be included at the end of subclause 326(1). Note 1 will refer the reader to Part 2 of the Regulatory Powers Act, which creates a framework for monitoring whether the provisions of an Act or a legislative instrument have been, or are being complied with. Note 2 will provide that an authorised officer may, under Part 5 of Chapter 10 of the Bill, enter certain kinds of premises without a warrant or consent to exercise monitoring powers.

Information subject to monitoring

Subclause 326(2) will provide that information given in compliance or purported compliance with a provision of the Bill will be subject to monitoring under Part 2 of the Regulatory Powers Act. This will ensure that Part 2 of that Act can operate for the purposes of monitoring information given in relation to a provision of the Bill. A note will be included at the end of subclause 326(2) that will refer the reader to Part 2 of the Regulatory Powers Act. Part 2 of that Act establishes a framework for monitoring whether information given in compliance, or purported compliance, with a provision of an Act or legislative instrument is correct.

Related provisions, authorised applicant, authorised person, issuing officer and relevant court

Subclause 326(3) will clarify how certain terms used in the Bill will operate in relation to the Bill and information referred to in subclause 326(2).

Paragraph 326(3)(a) will provide that each related provision (as defined in clause 12 of the Bill) is related to the provisions of the Bill. Clause 12 of the Bill will define the term related provision to mean a provision of the Bill that creates an offence, a civil penalty provision of the Bill, or a provision of the Crimes Act or the Criminal Code that relates to the Bill and creates an offence.

Paragraph 326(3)(a) will ensure that Part 2 of the Regulatory Powers Act will be able to operate for the purposes of monitoring compliance with those provisions, or for the purposes of monitoring whether information given in compliance, or purported compliance, with those provisions is correct. This will be particularly important where premises are entered under a monitoring warrant for the purposes of determining compliance with a provision of the Bill that has been expressly identified in that warrant.
Paragraphs 326(3)(b) and 326(3)(c) will provide that a reference to an authorised applicant and a reference to an authorised person in Part 2 of the Regulatory Powers Act will be a reference to an authorised officer under the Bill. Clause 12 of the Bill will define the term authorised officer to mean a person who is authorised under clause 291 of the Bill to be an authorised officer under the Bill, except as provided by clause 324 of the Bill.

As a result of paragraphs 326(3)(b) and 326(3)(c), an authorised officer under the Bill will be able to apply to an issuing officer for a monitoring warrant in relation to premises. These paragraphs will also enable an authorised officer to enter any premises and exercise monitoring powers either for the purposes of determining whether provisions subject to monitoring have been, or are being, complied with, or for the purposes of determining whether information subject to monitoring is correct. However, unless Part 5 of Chapter 10 of the Bill will apply to the premises, an authorised officer will not be able to enter the premises unless the occupier has provided consent, or the authorised officer is in possession of a monitoring warrant.

Paragraph 326(3)(d) will provide that a reference to an issuing officer in Part 2 of the Regulatory Powers Act will be a reference to an issuing officer under the Bill. Clause 12 of the Bill will define the term issuing officer to mean a magistrate, a Judge of a court of a State or Territory, or a Judge of the Federal Court of Australia or the Federal Circuit Court.

Paragraph 326(3)(e) will provide that a reference to a relevant court in Part 2 of the Regulatory Powers Act will be a reference to a relevant court under the Bill. Clause 12 of the Bill will define the term relevant court to mean the Federal Court of Australia, the Federal Circuit Court of Australia, or a court of a State or Territory that has jurisdiction in relation to matters arising under the Bill.

**Person assisting**

Subclause 326(4) will provide that an authorised person (which will mean an authorised officer under the Bill) may be assisted by other persons when exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to a provision of the Bill. This will enable, for example, an authorised officer to be assisted when operating electronic equipment on premises subject to monitoring.

A note will also be included at the end of subclause 326(4) that will refer the reader to section 23 of the Regulatory Powers Act, and will clarify that an authorised person will be able to be assisted by other persons if that assistance is necessary and reasonable. When determining whether it is necessary and reasonable for an authorised officer to be assisted by other persons, it is intended that regard will be had to any skills, training or relevant experience of that other person, including whether appropriate training is required.

Allowing a person assisting to exercise powers will support the authorised officer in the exercise of their powers to monitor and investigate compliance with the Bill.

It will be appropriate for an authorised officer to be assisted by other persons when exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act where, for example:

- no other authorised officer is available to assist;
- the premises that will be subject to monitoring is large;
- there is a large number of documents or material that needs to be reviewed;
• the other person is more familiar with the relevant premises or holds a particular set of skills that would enable the authorised officer to effectively exercise their powers and perform their functions or duties;
• things are heavy or difficult to move without assistance.

Extension to external Territories

Subclause 326(5) will extend the application of Part 2 of the Regulatory Powers Act, as that Part applies to the provisions of the Bill identified in subclause 326(1) and information mentioned in subclause 326(2), to every external Territory, and each other area, to which the relevant provision of the Bill extends under subclause 8(2) of the Bill. This will mean that if the relevant provision of the Bill is extended to an external Territory or an area adjacent to that external territory (such as the exclusive economic zone), then Part 2 of the Regulatory Powers Act will also apply to that extended area.

Clause 327 Modifications of Part 2 of the Regulatory Powers Act

Clause 327 will modify the operation of certain provisions in Part 2 of the Regulatory Powers Act, as those provisions apply to the provisions of the Bill identified in subclause 326(1) of the Bill and information mentioned in subclause 326(2) of the Bill.

Additional monitoring powers

Subclause 327(1) will clarify that, for the purposes of Part 2 of the Regulatory Powers Act, as that Part applies to the Bill, the additional monitoring powers listed in subclause 327(2) will also be taken to be monitoring powers for the purposes of determining compliance with a provision of the Bill or the correctness of information mentioned in subclause 326(2). That is, the powers will be additional to the powers set out in Part 2 of the Regulatory Powers Act.

Subclause 327(2) will modify the operation of section 19 of the Regulatory Powers Act and provide for three additional monitoring powers that may be exercised by authorised officers in relation to premises entered under section 18 of the Regulatory Powers Act.

Paragraph 327(2)(a) will allow an authorised officer to take, test and analyse samples of any thing on premises entered under Part 2 of the Regulatory Powers Act. This will be necessary because the power to take, test and analyse samples is an essential element of an authorised officer’s monitoring powers, as it allows the authorised officer to assess whether things found on premises entered under Part 2 of the Regulatory Powers Act comply, or will comply, with the requirements of the Bill.

Paragraph 327(2)(b) will enable an authorised officer to secure premises entered under Part 2 of the Regulatory Powers Act. For example, this will enable an authorised officer to secure a room on the premises that contains evidence of non-compliance with provisions of the Bill. This power will be necessary because there will be situations in which an authorised officer will not be seeking to obtain a warrant in relation to premises but will still need to secure those premises for the purposes of further analysis or testing to determine whether, for example, the Secretary should refuse or revoke a permit or certificate or suspend or revoke a registration.

Paragraph 327(2)(c) will enable an authorised officer to secure things on premises entered under Part 2 of the Regulatory Powers Act for the purpose of testing or analysing those
things. This power will be broader than the power in section 22 of the Regulatory Powers Act. It is necessary because there will be situations in which an authorised officer will not be seeking to obtain a warrant to seize things found on premises but will still need to secure those things for the purposes of further analysis or testing to determine whether, for example, the Secretary should refuse or revoke a permit or certificate or suspend or revoke a registration.

**Identity cards**

Subclause 327(3) will clarify that Part 2 of the Regulatory Powers Act will apply to the provisions of the Bill as if a reference in that Part to an identity card were a reference to an identity card issued under clause 306 of the Bill. For example, paragraph 26(b) of the Regulatory Powers Act provides that, before entering premises under a monitoring warrant, an authorised person must show the authorised person’s identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises. Subclause 327(3) will ensure that the reference to an identity card in that paragraph is taken to be a reference to an identity card issued under clause 306 of the Bill.

Subclause 327(4) will identify the provisions of Part 2 of the Regulatory Powers Act that relate to identity cards but will not apply in relation to the provisions referred to subclause 326(1) of the Bill. These provisions will be:

- the definition of *identity card* in section 4;
- sections 13 and 15; and
- Division 8 of Part 2.

These provisions of the Regulatory Powers Act are not required to apply to the Bill as the Bill will provide its own scheme for identity cards. Specifically:

- Paragraph 327(4)(a) of the Bill will provide that the definition of *identity card* set out in section 4 of the Regulatory Powers Act does not apply to the provisions listed in subclause 329(1) of the Bill. This definition is not required as the regime set out in clause 306 of the Bill will apply.
- Paragraph 327(4)(b) of the Bill will provide that sections 13 and 15 of the Regulatory Powers Act will not apply for the purposes of the provisions set out in subclause 326(1) of the Bill. Section 13 provides a definition of identity card and section 15 provides the definition of relevant chief executive officer (as the person who is authorised to issue identity cards under Part 2 of the Regulatory Powers Act). Sections 13 and 15 of the Regulatory Powers Act are not required to apply to the Bill as the issue of identity cards will be dealt with under clause 306 of the Bill.
- Paragraph 327(4)(c) of the Bill will provide that Division 8 of Part 2 of the Regulatory Powers Act will not apply to the provisions set out in subclause 326(1) of the Bill. Division 8 of Part 2 deals with the issue and form of an identity card for the purposes of Part 2 of that Act, the requirement to carry an identity card at all times and an offence of failing to return the identity card when it is no longer required. Division 8 of Part 2 of the Regulatory Powers Act is not required to apply to the Bill as these matters will be dealt with in clauses 306 and 307 of the Bill.
Premises

Subclause 327(5) will provide that Part 2 of the Regulatory Powers Act applies to the provisions in the Bill as if a reference to premises in that Part were a reference to premises, as that term will be defined in clause 12 of the Bill. This will ensure that powers that may be exercised in relation to premises under the Regulatory Powers Act will be able to be exercised in relation to premises as defined under the Bill.

Use of force in executing a warrant

Subclause 327(6) will provide that, when executing a monitoring warrant, an authorised person or a person assisting an authorised person may use such force against things as is necessary and reasonable in the circumstances. In the absence of this provision, the use of force may amount to illegally damaging someone’s property.

What is necessary and reasonable will depend on the circumstances that led to the use of force and will be assessed in each case. The use of force will only be permissible if it is against things (such as a door), and not against a person. This will ensure protection to individuals and will clarify that physical force on an individual cannot be used in the exercise of powers to enter premises. The use of force may be required to achieve the object of monitoring or investigating compliance with the Bill, but this needs to be balanced against the right of the occupier of the premises not to have their property destroyed unless the force is necessary and reasonable in the circumstances.

It is necessary to allow a person assisting an authorised person or authorised officer to use force against things for the following reasons:

- no other authorised person or authorised officer may be available to assist;
- there may be a large number of things on the premises that need to be searched;
- things may be heavy or difficult to move without assistance.

PART 3—INVESTIGATION

Division 1—Introduction

Clause 328 Simplified outline of this Part

Clause 328 will provide a simplified outline of Part 3 of Chapter 10 of the Bill. Part 3 of Chapter 10 will trigger the standard investigation powers provisions set out in Part 3 of the Regulatory Powers Act. Part 3 of the Regulatory Powers Act creates a framework for gathering evidential material that relates to the contravention of offence and civil penalty provisions of an Act or legislative instrument.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 3 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
Division 2—Investigating under Part 3 of the Regulatory Powers Act

Clause 329    Basic investigation powers under Part 3 of the Regulatory Powers Act

Provisions subject to investigation

Subclause 329(1) will provide which provisions of the Bill will be subject to investigation under Part 3 of the Regulatory Powers Act. This will ensure that Part 3 of that Act will be able to operate for the purposes of investigating compliance with the Bill.

Subclause 329(1) will provide that a provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is an offence against the Bill (paragraph 329(1)(a)), a civil penalty provision (paragraph 329(1)(b)) or an offence against the Crimes Act or the Criminal Code that relates to the Bill (paragraph 329(1)(c)). The application of Part 3 of the Regulatory Powers Act will remove the requirement to duplicate the investigation provisions in the Bill.

Two notes will be included at the end of subclause 329(1). Note 1 will advise the reader that Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened and that it includes powers of entry, search and seizure. Note 2 will advise the reader that an authorised officer may, under Part 5 of Chapter 10 of the Bill, enter certain kinds of premises without a warrant or consent to exercise investigation and seizure powers. See the notes on the clauses in Part 5 of Chapter 10 of the Bill for further information on these provisions.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

Subclause 329(2) will clarify how certain terms used in the Bill will operate in relation to evidential material that relates to a provision referred to in subclause 329(1) – that is, a provision of the Bill to which Part 3 of the Regulatory Powers Act will apply.

Paragraph 329(2)(a) will provide that each related provision (as that term will be defined in clause 12 of the Bill) is related to that evidential material. Clause 12 of the Bill will define the term related provision as a provision of the Bill that creates an offence, a civil penalty provision of the Bill, or a provision of the Crimes Act or the Criminal Code that relates to the Bill and creates an offence. Paragraph 329(2)(a) will enable Part 3 of the Regulatory Powers Act to apply for the purposes of investigating non-compliance with those related provisions.

Paragraphs 329(2)(b) and 329(2)(c) of the Bill will provide that a reference to an authorised applicant and a reference to an authorised person in Part 3 of the Regulatory Powers Act will be a reference to an authorised officer under the Bill.

As a result of paragraphs 329(2)(b) and (c), an authorised officer under the Bill will be able to apply to an issuing officer for an investigation warrant in relation to premises under section 70 of the Regulatory Powers Act. These paragraphs will also enable an authorised officer to enter any premises and exercise investigation powers for the purposes of determining compliance with the Bill. However, unless Part 5 of Chapter 10 of the Bill will apply to the premises, an authorised officer will not be able to enter the premises unless the occupier has provided consent, or the authorised officer is in possession of an investigation warrant.
Paragraph 329(2)(d) will provide that a reference to an issuing officer in Part 3 of the Regulatory Powers Act will be a reference to an issuing officer under the Bill. Clause 12 of the Bill will define the term issuing officer to mean a magistrate, a Judge of a court of a State or Territory, or a Judge of the Federal Court or the Federal Circuit Court.

Paragraph 329(2)(e) will provide that a reference to the relevant chief executive in Part 3 of the Regulatory Powers Act will be a reference to the Secretary under the Bill.

Paragraph 329(2)(f) will provide that a reference to a relevant court in Part 3 of the Regulatory Powers Act will be a reference to the relevant court. Clause 12 of the Bill will define the term relevant court to mean the Federal Court, the Federal Circuit Court, or a court of a State or Territory that has jurisdiction in relation to matters arising under the Bill.

### Person assisting

Subclause 329(3) will provide that an authorised person (which will mean an authorised officer under the Bill) may be assisted by other persons when exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision referred to in subclause 329(1). An authorised person may, for example, be assisted when operating electronic equipment on the premises for the purposes of monitoring compliance with the Bill.

A note will be included at the end of subclause 329(3) that will refer the reader to section 53 of the Regulatory Powers Act, and will clarify that an authorised person will be able to be assisted by other persons if the assistance is necessary and reasonable. When determining whether it is necessary and reasonable for an authorised officer to be assisted by other persons, it is intended that regard will be had to any skills, training or relevant experience of that other person, including whether appropriate training is required.

Allowing a person assisting to exercise powers will support the authorised officer in the exercise of their powers to monitor and investigate compliance with the Bill.

It will be appropriate for an authorised officer to be assisted by other persons when exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act where, for example:

- no other authorised officer is available to assist;
- the premises that will be subject to investigation is large;
- there is a large number of documents or material that needs to be reviewed;
- the other person is more familiar with the relevant premises or holds a particular set of skills that would enable the authorised officer to effectively exercise their powers and perform their functions or duties;
- things are heavy or difficult to move without assistance.

### Extension to external Territories

Subclause 329(4) will extend the application of Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision of the Bill identified in subclause 329(1), to every external Territory, and each other area, to which the relevant provision of the Bill extends under subclause 8(2) of the Bill. This will mean that if the relevant provision of the Bill extends to an external Territory or an area adjacent to that external territory (such as the
exclusive economic zone), then Part 3 of the Regulatory Powers Act will also apply to that extended area.

Clause 330 Modifications of Part 3 of the Regulatory Powers Act

Clause 330 will modify the operation of certain provisions in Part 3 of the Regulatory Powers Act, as those provisions apply to the provisions of the Bill identified in subclause 329(1) of the Bill.

Additional investigation power

Clause 330(1) will clarify that, for the purposes of Part 2 of the Regulatory Powers Act, as that Part applies to the Bill, the additional investigation powers listed in subclause 330(2) will also be taken to be investigation powers in relation to evidentiary material that relates to a provision referred to in subclause 329(1). That is, the powers will be additional to the powers set out in Part 3 of the Regulatory Powers Act.

Subclause 330(2) will modify the operation of Part 3 of the Regulatory Powers Act in its application to the Bill to allow an authorised officer to take, test and analyse samples of any thing on premises entered under Part 3 of the Regulatory Powers Act. This will be necessary because the power to take, test and analyse samples is an essential element of an authorised officer’s investigation powers, as it allows the authorised officer to assess whether things found on premises entered under Part 3 of the Regulatory Powers Act comply, or will comply, with the requirements of the Bill. It will also make the investigation powers consistent with other powers under the Bill such as those that may be exercised in relation to an audit (see clause 272 of the Bill), assessment (see clause 289 of the Bill) or when dealing with applications (see clause 379 of the Bill).

Identity cards

Subclause 330(3) will provide that Part 3 of the Regulatory Powers Act will apply to the provisions of the Bill referred to in subclause 329(1) as if a reference in Part 3 of the Regulatory Powers Act to an identity card were a reference to an identity card issued under clause 306 of the Bill. For example, under subsection 55(6) of the Regulatory Powers Act, if an authorised officer enters premises with consent, and the authorised officer has not shown the occupier the authorised officer’s identity card before entering the premises, the authorised officer must do so as soon as is reasonably practicable after entering the premises.

Subclause 330(4) will ensure that the reference to an identity card in that paragraph is taken to be a reference to an identity card issued under clause 306 of the Bill.

Subclause 330(4) will identify the provisions of Part 3 of the Regulatory Powers Act that relate to identity cards but will not apply in relation to the provisions referred to subclause 329(1) of the Bill. These provisions will be:

- the definition of identity card in section 4;
- section 43; and
- Division 9 of Part 3.
These provisions of the Regulatory Powers Act are not required to apply to the Bill as the Bill will provide its own scheme for identity cards. Specifically:

- Paragraph 330(4)(a) of the Bill will provide that the definition of identity card set out in section 4 of the Regulatory Powers Act does not apply to the provisions listed in subclause 329(1) of the Bill. This definition is not required as the regime set out in clause 306 of the Bill will apply.
- Paragraph 330(4)(b) of the Bill will provide that section 43 of the Regulatory Powers Act will not apply for the purposes of the provisions set out in subclause 329(1) of the Bill. Section 43 provides that an identity card in relation to an authorised person in relation to evidential material for the purposes of Part 3 of the Regulatory Powers Act means a card issued by the relevant chief executive under section 76 of the Act. Section 43 is not required as the issue of identity cards will be dealt with under clause 306 of the Bill.
- Paragraph 330(4)(c) of the Bill will provide that Division 9 of Part 3 of the Regulatory Powers Act will not apply to the provisions set out in subclause 329(1) of the Bill. Division 9 of Part 3 deals with the issue and form of an identity card for the purposes of Part 3 of that Act, the requirement to carry an identity card at all times and an offence of failing to return the identity card when it is no longer required. These matters will be dealt with in clauses 306 and 307 of the Bill and therefore Division 9 of Part 3 of the Regulatory Powers Act will not be required.

Premises

Subclause 330(5) will provide that Part 3 of the Regulatory Powers Act applies to evidential material that relates to provisions of the Bill referred to in subclause 329(1) of the Bill as if a reference to premises in that Part were a reference to premises as that term will be defined in clause 12 of the Bill. This will ensure that powers that may be exercised in relation to premises under the Regulatory Powers Act will be able to be exercised in relation to premises as defined under the Bill.

Use of force in executing a warrant

Subclause 330(6) will provide that, when executing an investigation warrant, an authorised person or a person assisting an authorised person may use such force against things as is necessary and reasonable in the circumstances. In the absence of this provision, the use of force may amount to illegally damaging someone’s property.

What is necessary and reasonable will depend on the circumstances that led to the use of force and will be assessed in each case. The use of force will only be permissible if it is against things (such as a door), and not against a person. This will ensure protection to individuals and will clarify that physical force on an individual cannot be used in the exercise of powers to enter premises. The use of force may be required to achieve the object of monitoring or investigating compliance with the Bill, but this needs to be balanced against the right of the occupier of the premises not to have their property destroyed unless the force is necessary and reasonable in the circumstances.
It is necessary to allow a person assisting an authorised person or authorised officer to use force against things for the following reasons:

- no other authorised person or authorised officer may be available to assist;
- there may be a large number of things on the premises that need to be searched;
- things may be heavy or difficult to move without assistance.

PART 4—ENTRY TO ADJACENT PREMISES

Division 1—Introduction

Clause 331 Simplified outline of this Part

Clause 331 will provide for a simplified outline of Part 4 of Chapter 10 of the Bill. Part 4 of Chapter 10 will provide that an authorised officer may enter premises adjacent to other premises to gain access to those other premises. The Part will provide that the entry must be with the consent of the occupier of the adjacent premises or under an adjacent premises warrant issued by an issuing officer. The Part will also provide that an authorised officer who enters adjacent premises will be subject to certain obligations and will be able to exercise certain powers.

The simplified outline is included to assist the reader to understand the substantive provisions of Part 3 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive provisions of the Bill.

Clause 332 Modified meaning of premises

Clause 332 will provide that, in Part 4 of Chapter 10 of the Bill, premises will have a different meaning to that given in clause 12 of the Bill, because it will not include a conveyance. This means that an authorised person will be unable to obtain an adjacent premises warrant to enter a conveyance for the purpose of gaining access to other premises.

Division 2—Entering adjacent premises to gain access to other premises

Clause 333 Entering adjacent premises to gain access to other premises

Subclause 333(1) will enable an authorised officer to enter any premises (adjacent premises) if it is necessary to do so for the purpose of gaining access to those other premises or to perform functions or duties or exercise powers as an authorised officer. This will include performing functions or duties or exercising powers when the authorised officer is an authorised person for the purposes of Parts 2 and 3 of the Regulatory Powers Act. For example, an authorised officer may enter adjacent premises for the purpose of gaining access to the targeted premises to exercise monitoring powers on this premises.

The power to enter adjacent premises is, however, limited. Subclause 333(2) will provide that an authorised officer will not be authorised to enter adjacent premises unless the occupier of the premises has consented to the entry and the authorised officer has shown the authorised officer’s identity card (if required by the occupier), or the entry is made under an adjacent premises warrant.

A note will be included at the end of subclause 333(2) that will refer the reader to Divisions 3 and 4 of Part 4 of Chapter 10 of the Bill and Parts 2 and 3 of the Regulatory Powers Act (as they apply because of Parts 2 and 3 of Chapter 10 of the Bill). These provisions will set out
matters relating to the issue of an adjacent premises warrant, and the obligations and powers of authorised officers in entering premises under an adjacent premises warrant or with consent.

**Clause 334 Entry under an adjacent premises warrant**

Clause 334 will provide that an authorised officer who enters premises under an adjacent premises warrant, and any person assisting the authorised officer, must take all reasonable steps to ensure that they cause as little inconvenience to the occupier of the premises as is practicable. This will recognise that neither the occupier of the adjacent premises nor the adjacent premises themselves will be the object of the monitoring or investigation powers.

**Division 3—Adjacent premises warrants**

**Clause 335 Application and issue of adjacent premises warrant**

*Application for warrant*

Subclause 335(1) will provide that an authorised officer may apply to an issuing officer for an adjacent premises warrant in relation to premises. An issuing officer will be a magistrate, a Judge of a court of a State or Territory, or a Judge of the Federal Court or the Federal Circuit Court. The power to apply for an adjacent premises warrant will only be able to be exercised by an authorised officer who will be authorised to perform this function and who will have the appropriate expertise and training.

*Issue of warrant*

Subclause 335(2) will provide that the issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purpose of gaining access to other premises to perform functions or duties, or exercise powers, as an authorised officer. These will be functions, duties and powers for the purposes of monitoring and investigating compliance with the Bill under Part 2 or 3 of the Regulatory Powers Act (as those Parts apply in relation to the Bill) or for the purposes of Part 5 of Chapter 10 of the Bill (which will deal with entering and exercising powers on premises without a warrant or consent).

However, subclause 335(3) will provide that the issuing officer must not issue the warrant unless the authorised officer or some other person has given the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought. This will ensure that the issuing officer has all available and relevant information necessary to decide whether it is appropriate to allow an authorised officer to compel the entry to the premises of an innocent bystander.

*Content of warrant*

Subclause 335(4) will set out the requirements relating to the content of the warrant. The warrant will be required to:

- describe the premises to which the warrant relates; and
- state that it is an adjacent premises warrant and the purpose for which the warrant is issued; and
• authorise one or more authorised officers to enter the premises, and to remain on the premises for such period as is reasonably necessary, for the purpose of gaining access to other premises to perform functions or duties, or exercise powers, as an authorised officer (These will be functions, duties and powers for the purposes of monitoring and investigating compliance with the Bill under Part 2 or 3 of the Regulatory Powers Act (as those Parts apply in relation to the Bill); or for the purposes of Part 5 of Chapter 10 of the Bill (which will deal with entering and exercising powers on premises without a warrant or consent). An authorised officer who will be able to execute the warrant and enter the premises may enter the premises multiple times while the warrant remains in force);
• whether entry is authorised to be made at any time of the day or during specified hours of the day; and
• specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to be in force.

As specified in paragraph 335(4)(d), the warrant may or may not include the name of the authorised officer or authorised officers who will be able to execute the warrant.

The information that will be set out in the warrant will provide the appropriate person for the adjacent premises with the scope of the powers that are authorised by the warrant. Clause 339 of the Bill will require that the details of the warrant must be provided to the appropriate person for the adjacent premises.

Division 4—Obligations and powers of authorised officers

Clause 336  Consent

Subclause 336(1) will provide that, before obtaining the consent of an occupier of adjacent premises for the purposes of entering those premises under paragraph 333(2)(a) of the Bill, an authorised officer must inform the occupier of the reasons for entering the premises and that the occupier may refuse consent. Subclause 336(2) will make it clear that consent has no effect unless the consent is voluntary. This will recognise the right of the person to allow entry to their premises before those premises may be entered under a warrant.

Subclause 336(3) will reinforce the voluntary nature of the consent, in that the occupier may consent for entry to be limited to entry during a particular period. If this is the case, the consent has effect for that period unless the consent is withdrawn before the end of that period. Subclause 336(4) will clarify that consent that is not limited by the occupier specifying when entry may occur will remain in force or have effect until the consent is withdrawn.

Subclause 336(5) will continue to reinforce the voluntary nature of the consent. It will provide that, if an authorised officer entered adjacent premises because of the consent of the occupier of those premises, the authorised officer, and any person assisting the authorised officer, must leave the premises if the consent ceases to have effect. That is, in the absence of a warrant, an authorised officer may only remain on premises with the consent of the occupier and only if consent has not been withdrawn. Remaining on premises in the absence of a warrant or consent may amount to trespass.
Clause 337  Announcement before entry under warrant

Subclause 337(1) will provide that before entering a premises under an adjacent premises warrant, an authorised officer must announce that they are authorised to enter the premises. In addition, if an appropriate person is present at the property, the authorised officer will be required to show their identity card to that person and give any person present at the premises the opportunity to allow entry to the premises. That is, the authorised officer will be required to give the appropriate person the opportunity to consent to the entry.

Exception for some adjacent premises warrants

However, subclause 337(2) will provide that the requirements that will be set out in subclause 337(1) will not need to be complied with if entry to the premises is to be made for the purposes of executing an investigation warrant or monitoring warrant on other premises, and the authorised officer believes on reasonable grounds that immediate entry to the premises is required to ensure the safety of a person or to ensure that the effective execution of the investigation warrant or monitoring warrant is not frustrated.

Subclause 337(3) will provide that if an authorised officer does not comply with subclause 337(1) because of subclause 337(2), and an appropriate person for the premises is present at the premises, then the authorised officer must, as soon as practicable after entering the premises, show the authorised officer’s identity card to the appropriate person.

For example, an authorised officer executing an adjacent premises warrant will be required to allow an appropriate person a reasonable period of time to unblock and open a door before they use force against that door to gain entry to the adjacent premises. However, if the authorised officer becomes aware that evidence is being destroyed on the premises listed in the relevant investigation or monitoring warrant, the authorised officer will be able to immediately enter the adjacent premises. As soon as is practicable after entering the adjacent premises in these circumstances, the authorised officer will be required to show their identity card to an appropriate person who is present at the adjacent premises.

Clause 338  Authorised officer to be in possession of warrant

Clause 338 will provide that an authorised officer who will execute an adjacent premises warrant must be in possession of the warrant or a copy of the warrant. In the absence of consent, the warrant provides the authorised officer with the authority to be on the premises. This is necessary to address any concerns about trespass.

Clause 339  Details of warrant etc. to be provided

Subclause 339(1) will set out when an authorised officer must comply with the requirements set out in subclause 339(2). Subclause 339(1) will provide that an authorised officer must comply with subclause 339(2) if an adjacent premises warrant is being executed in relation to premises and an appropriate person for the premises is present at the premises while the warrant is being executed.

Subclause 339(2) will provide that, in the circumstances set out in subclause 339(1), an authorised officer must, as soon as practicable, make a copy of the warrant available to the appropriate person (which need not include the signature of the issuing officer who issued it) or inform the appropriate person of the rights and responsibilities of the person under Division 5 of Part 4 of Chapter 10 of the Bill. A copy of the warrant will not require the signature of
the issuing officer as it may be an electronic copy that has been approved, but not signed, by an issuing officer.

Division 5 of Part 4 of Chapter 10 of the Bill will set out the rights and responsibilities of the appropriate person in relation to observing the execution of a warrant and providing facilities and assistance.

**Clause 340 Use of force in executing a warrant**

Clause 340 will provide that in executing an adjacent premises warrant, an authorised officer may use such force against things as is necessary and reasonable in the circumstances. In the absence of this provision, the use of force may amount to illegally damaging someone’s property.

What is necessary and reasonable will depend on the circumstances that led to the use of force and will be assessed in each case. The use of force will only be permissible if it is against things (such as a door), and not against a person. This will ensure protection to individuals and will clarify that physical force on an individual cannot be used in the exercise of powers to enter premises. The use of force may be required to achieve the object of monitoring or investigating compliance with the Bill, but this needs to be balanced against the right of the occupier of the adjacent premises not to have their property destroyed, unless the force is necessary and reasonable in the circumstances.

**Division 5—Appropriate person’s rights and responsibilities**

**Clause 341 Right to observe execution of warrant**

Subclause 341(1) will provide that an appropriate person for the premises to which the adjacent premises warrant relates is entitled to observe the execution of a warrant on the relevant premises if they are present at the premises while the warrant is being executed. This will mean, for example, that if no-one is present, the authorised officer will not be required to wait until there is someone who will be able to observe the execution of the warrant.

Subclause 341(2) will qualify the right that will be set out in subclause 341(1). It will provide that the right to observe the execution of the warrant ceases if the appropriate person impedes that execution. A person who impedes the execution of the warrant may be liable to an offence or a civil penalty for hindering or preventing the authorised officer from performing functions or exercising powers under the Bill (see clause 427 of the Bill).

Subclause 341(3) will provide that the right to observe the execution of the warrant does not prevent the warrant being executed in two or more areas of a premises, even if the appropriate person is not physically able to be present in both areas at the same time.

**Clause 342 Responsibility to provide facilities and assistance**

Subclause 342(1) will provide that an appropriate person for premises to which an adjacent premises warrant relates must provide the following persons with all reasonable facilities and assistance for the effective exercise of their powers while on the premises:

- an authorised officer executing the warrant; and
- each person assisting the authorised officer.
This responsibility will be similar to clause 271 of the Bill, which will require the relevant person for the purposes of an audit to provide the auditor with facilities and assistance.

Subclause 342(2) will prescribe a fault-based offence where a person is required to provide the reasonable facilities and assistance and fails to do so. The fault-based offence will be subject to a penalty of 30 penalty units, which will be consistent with similar Commonwealth offences such as section 517 of the Biosecurity Act (appropriate person to provide officers etc. with facilities and assistance). The penalty is intended to encourage persons to provide reasonable facilities and assistance so that the authorised officer will be able to perform the monitoring and compliance functions to ensure compliance with the Bill.

Division 6—Powers of issuing officers

Clause 343 Powers of issuing officers

Powers conferred personally

Subclause 343(1) will provide that the power conferred on the issuing officer under Part 2 of Chapter 10 of the Bill will be conferred on an issuing officer in a personal capacity and not as a court or a member of the court. This will recognise that issuing a warrant will be an executive function and will not be the exercise of judicial power.

Powers need not be accepted

Subclause 343 will provide that the issuing officer does not have to accept the power conferred upon the issuing officer.

Protection and immunity

Subclause 343(3) will provide that where an issuing officer exercises a power, the issuing officer will have the same protection and immunity as if the officer were exercising the power as the court of which the issuing officer is a member, or as a member of the court of which the issuing officer is a member.

PART 5—ENTERING AND EXERCISING POWERS ON PREMISES WITHOUT A WARRANT OR CONSENT

Division 1—Introduction

Clause 344 Simplified outline of this Part

Clause 344 will provide for a simplified outline of Part 5 of Chapter 10 of the Bill. Part 5 of Chapter 10 will provide that an authorised officer may enter certain kinds of premises without a warrant or consent to exercise monitoring powers or investigation and seizure powers. The Part will also provide that an authorised officer who enters premises under Part 5 of Chapter 10 of the Bill will be subject to certain obligations and may exercise certain powers.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 5 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
Clause 345  Premises to which this Part applies

Clause 345 will provide that the powers set out in Part 5 of Chapter 10 of the Bill will only apply to premises that are, or that form part of, a registered establishment, and premises in or on, or that form part of, an accredited property. In Part 5 of Chapter 10 of the Bill, these premises will be referred to as relevant premises.

Division 2—Monitoring and searching relevant premises

Entry to relevant premises without consent or a warrant will only be provided for in specific circumstances as set out in clauses 346 and 347 of the Bill, which include:

- entering a registered establishment or an accredited property for the purposes of determining whether the Bill has been, or is being, complied with, or whether information provided for the purposes of the Bill is correct (subclause 346(1) of the Bill);
- when the authorised officer has reasonable grounds for suspecting there may be a particular thing on the premises which is related to the contravention of an offence provision or a civil penalty provision (subclause 347(1) of the Bill).

Entry to relevant premises without a warrant or consent will generally be in circumstances where consent to enter is implied by the voluntary nature of the arrangement. This is consistent with other provisions across the Commonwealth statute book that involve licensed premises (for example, the Therapeutic Goods Act 1989 and Gene Technology Act 2000).

Clause 346  Monitoring relevant premises

Subclause 346(1) will provide that an authorised officer may enter relevant premises without a warrant or consent for the purposes of determining whether provisions under the Bill are being complied with or information provided for the purposes of the Bill is correct. A note will be included at the end of subclause 346(1) that will advise the reader that the expression this Act includes the Regulatory Powers Act as it applies in relation to the Bill. The note will also refer the reader to the definition of this Act in clause 12 of the Bill.

However, subclause 346(2) will provide that an authorised officer may only enter relevant premises (without a warrant or consent) during the business hours of the relevant premises. A note will be included at the end of subclause 346(2) that will advise the reader that authorised officers have certain powers and obligations when entering a premises under clause 346, which will be provided for in Division 3 of Part 5.

Subclause 346(3) will provide that Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act (monitoring powers), and section 29 of the Regulatory Powers Act (compensation for damage to electronic equipment) will apply in accordance with Part 2 of Chapter 10 of the Bill as if:

- entry to the relevant premises were made under section 18 of the Regulatory Powers Act under a monitoring warrant; and
- for the purposes of those provisions of the Regulatory Powers Act, relevant data included information relevant to deciding whether to exercise a power under this Act.

Subclause 346(3) will mean that, having entered the relevant premises without a warrant or consent, an authorised officer will be able to exercise monitoring powers as will be provided under Subdivision A of Division 2 of Part 2 and section 29 of the Regulatory Powers Act in
accordance with Part 2 of Chapter 10 of the Bill. This will provide authorised officers with monitoring powers as if they had the authority of a monitoring warrant, so that they have the capability to monitor compliance with the Bill. This subclause will also activate protections for people as applicable to monitoring warrants, including requiring an authorised officer to make an announcement before entering premises. This will ensure people’s privacy and other rights are observed while allowing appropriate monitoring of compliance with the Bill.

Two notes will be included at the end of subclause 346(3). Note 1 will advise the reader that Subdivision A of Division 2 of Part 2 and section 29 of the Regulatory Powers Act are about monitoring powers and compensation for damage to electronic equipment operated under those powers. Note 2 will advise the reader that Part 2 of Chapter 10 of the Bill will expand the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act.

Subclause 346(4) will clarify that the application of Subdivision A of Division 2 of Part 2 and section 29 of the Regulatory Powers Act under subclause 346(3) will be in addition to their application under Part 2 of Chapter 10 of the Bill.

Subclause 346(5) will provide that if the relevant premises are a conveyance, an authorised officer will be able to stop and detain the conveyance for the purpose of exercising any of the monitoring powers under Subdivision A of Division 2 of Part 2 of the Regulatory Powers Act as it applies in accordance with Part 2 of this Chapter and subclause 346(3) of the Bill.

**Clause 347 Offence-related searches and seizures**

Paragraph 347(1)(a) will provide that an authorised officer may enter relevant premises without a warrant or consent if the officer has reasonable grounds for suspecting that there may be a particular thing on the premises with respect to which an offence provision or a civil penalty provision (a provision referred to in subclause 329(1) of the Bill), has been contravened or is suspected, on reasonable grounds, to have been contravened.

Paragraph 347(1)(b) will provide that an authorised officer may enter relevant premises without a warrant or consent if the officer has reasonable grounds for suspecting that there may be, on the premises, a particular thing that there are reasonable grounds for suspecting will provide evidence as to the contravention of an offence provision or a civil penalty provision.

Paragraph 347(1)(c) will provide that an authorised officer may enter relevant premises (without a warrant or consent) if the officer has reasonable grounds for suspecting that there may be, on the premises, a particular thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening an offence provision or a civil penalty provision. A note will be included at the end of paragraph 347(1)(c) that will advise the reader that subclause 329(1) of the Bill refers to provisions for offences against the Bill, civil penalty provisions of the Bill and provisions for offences against the Crimes Act or the *Criminal Code* that relate to the Bill.

Subclause 347(2) will provide that if circumstances exist in subclause 347(1) that justify entry to the premises without a warrant or consent, the authorised officer may enter the premises at any time. A note will be included at the end of subclause 347(2) that will advise the reader that the obligations and powers of authorised officers entering premises without a warrant or consent will be set in Division 3 of Part 5 of Chapter 10 of the Bill.
Subclause 347(3) of the Bill will provide that Division 2 of Part 3 of the Regulatory Powers Act (powers of authorised persons), Division 5 of Part 3 of the Regulatory Powers Act (general provisions relating to seizure), and section 61 (compensation for damage to electronic equipment) of the Regulatory Powers Act apply to clause 347. This will ensure that powers of authorised officers to exercise search and seizure powers are limited by the obligations set out in the Regulatory Powers Act and to make sure that these powers will only be exercised when necessary.

Two notes will be included at the end of subclause 347(3). Note 1 will advise the reader that Divisions 2 and 5 of Part 3, and section 61, of the Regulatory Powers Act are about investigation powers, seizure, and compensation for damage to electronic equipment operated under investigation powers. Note 2 will advise the reader that Part 3 of Chapter 10 of the Bill expands the investigation powers under Subdivision A of Division 2 of Part 3 of the Regulatory Powers Act.

Subclause 347(4) will clarify that the application of Divisions 2 and 5 of Part 3 and section 61, of the Regulatory Powers Act under subclause 347(3) will be in addition to their application under Part 3 of Chapter 10 of the Bill. This means that they will apply in relation to both Parts 3 and 5 of Chapter 10 of the Bill.

Subclause 347(5) will provide that if the relevant premises are a conveyance, an authorised officer may stop and detain the conveyance for the purpose of exercising an investigation power under Division 2 of Part 3 of the Regulatory Powers Act as it applies because of Part 3 of Chapter 10 of the Bill and subclause 347(3).

**Division 3—Obligations and powers of authorised officers**

**Clause 348 Announcement before entry**

Clause 348 will provide that, before an authorised officer enters relevant premises (without a warrant or consent) under clauses 346 or 347 of the Bill, the authorised officer must announce that they are authorised to enter the premises. In addition, if the appropriate person for the premises is present, the authorised officer must show the authorised officer’s identity card to the appropriate person and explain the reasons for entering the premises.

This will ensure that if an appropriate person is present when the premises are entered, they are made aware of who is entering the premises and for what purpose. Providing that an announcement must be made before entry gives the appropriate person the opportunity to facilitate entry to the premises without the authorised officer needing to use force.

**Clause 349 Use of force in entering premises**

Clause 349 will provide that in entering relevant premises under subclause 347 of the Bill (offence-related search and seizure) and while on those premises, an authorised officer or a person assisting that officer may use force against things as is necessary and reasonable in the circumstances. In the absence of this provision, the use of force may amount to illegally damaging someone’s property.

What is necessary and reasonable will depend on the circumstances that led to the use of force and will be assessed in each case. The use of force will only be permissible if it is used against things (such as a door), and not against a person. This will ensure protection to individuals and will clarify that physical force on an individual cannot be used in the exercise
of powers to enter premises. The use of force may be required to achieve the object of monitoring or investigating compliance with the Bill, but this needs to be balanced against the right of the occupier of the adjacent premises not to have their property destroyed unless the force is necessary and reasonable in the circumstances.

**Division 4—Appropriate person’s rights and responsibilities**

**Clause 350 Right to observe exercise of powers**

Subclause 350(1) will provide that an appropriate person, who is present at a relevant premises entered under clause 346 of the Bill (monitoring relevant premises) or clause 347 of the Bill (offence-related search and seizure), will be entitled to observe the exercise of powers under those clauses. This will mean, for example, that if no one is present, the authorised officer will not be required to wait until there is someone who is able to observe the execution of the warrant.

Subclause 350(2) will qualify the right that will be set out in subclause 350(1). The right to observe the execution of the powers ceases if the appropriate person impedes the exercise of those powers. A person who impedes the exercise of the powers may be liable to an offence or a civil penalty for hindering or preventing the authorised officer from performing functions or exercising powers under the Bill (see clause 427 of the Bill).

Subclause 350(3) will provide the right to observe the exercise of the powers will not prevent the powers being exercised in two or more areas of a premises, even if the appropriate person is not physically able to be present in both areas at the same time.

**Clause 351 Responsibility to provide facilities and assistance**

Subclause 351(1) will provide that an appropriate person for relevant premises entered under clause 346 of the Bill (monitoring relevant premises) or clause 347 of the Bill (offence-related search and seizure) will be required to provide the following persons with all reasonable facilities and assistance for the effective exercise of their powers while on the premises:

- an authorised officer executing the warrant; and
- each person assisting the authorised officer.

This responsibility will be similar to clause 271 of the Bill, which will require the relevant person for the purposes of an audit to provide the auditor with facilities and assistance.

Subclause 351(2) will prescribe a fault-based offence where a person is required to provide reasonable facilities and assistance and fails to do so. The fault-based offence will be subject to a penalty of 30 penalty units, which will be consistent with similar Commonwealth offences such as section 517 of the Biosecurity Act (appropriate person to provide officers etc. with facilities and assistance). The level of penalty is intended to encourage persons to provide reasonable facilities and assistance so that the authorised officer will be able to perform the monitoring and compliance functions to ensure compliance with the Bill.
PART 6—POWERS IN EMERGENCY SITUATIONS

Division 1—Introduction

Clause 352  Simplified outline of this Part

Clause 352 will provide for a simplified outline of Part 6 of Chapter 10 of the Bill. Part 6 of Chapter 10 will provide that an authorised officer may, in serious and urgent circumstances, and without consent or a warrant, secure evidential material in or on certain premises or stop and search a conveyance. The simplified outline is included to assist the reader to understand the substantive clauses of that Part; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Powers that may be exercised in or on premises in emergency situations

Clause 353  Securing evidential material without consent or warrant in emergency situation

Subclause 353(1) will be an application clause that will set out when clause 353 will apply.

Clause 353 will apply if an authorised officer has entered premises under:

- Part 2 of the Regulatory Powers Act, as that Part applies in relation to the Bill (monitoring compliance with the Bill); or
- clause 346 of the Bill (monitoring certain premises without consent or a warrant).

Subclause 353(2) will provide that, in the situations that will be covered by subclause 353(1), an authorised officer may secure evidential material if they find it on those premises pending the obtaining of an investigation warrant. An authorised officer will only be able to exercise this power if the authorised officer reasonably suspects that:

- particular evidential material is in or on the premises; and
- it is necessary to secure the evidential material in order to prevent it from being concealed, lost or destroyed; and
- it is necessary to do so without the authority of an investigation warrant because the circumstances are serious and urgent.

Before an authorised officer will be able to exercise the powers under this subclause, the authorised officer must reasonably suspect the existence of the matters listed above. This threshold test includes both subjective and objective elements and is based on a suspicion rather than a belief.

The ability to be able to secure evidential material in serious and urgent circumstances will be necessary to ensure that the material will still exist in order for it to be seized under an investigation warrant.
Clause 354  Stopping and searching conveyance without warrant in emergency situation

Clause 354 will apply if an authorised officer reasonably suspects that:

- particular evidential material is in or on a conveyance; and
- it is necessary to exercise a power under subclause 354(2) in order to prevent the evidential material being concealed, lost or destroyed; and
- it is necessary to exercise the power without the authority of an investigation warrant because the circumstances are serious and urgent.

Before an authorised officer will be able to exercise the powers under the subclause, the authorised officer must reasonably suspect the existence of the matters listed above. This threshold test includes both subjective and objective elements and is based on a suspicion rather than a belief.

Authorised officer may stop, detain and search conveyance and secure evidential material

Subclause 354(2) will provide that in the situations outlined in subclause 354(1), an authorised officer may:

- stop and detain the conveyance; and
- search the conveyance, and anything in or on the conveyance, for the evidential material; and
- secure the evidential material if the authorised officer finds it there pending the obtaining of an investigation warrant to seize it.

Subclause 354(3) will also provide that if, in the course of searching for the evidential material, the authorised officer finds other evidential material, the authorised officer may secure that other evidential material, pending the obtaining of an investigation warrant to seize it. However, the authorised officer will only be able to secure the other evidential material if the authorised officer reasonably suspects that:

- it is necessary to secure it in order to prevent its concealment, loss or destruction; and
- it is necessary to secure it without the authority of an investigation warrant because the circumstances are serious and urgent.

The ability to secure evidential material under subclauses 354(2) and 354(3), in serious and urgent circumstances, will be necessary to ensure that the material will still exist if there is a reason for it to be seized.

In addition, before an authorised officer will be able to exercise the powers under subclauses 354(2) and 354(3), the authorised officer must reasonably suspect the existence of the matters listed above. This threshold test includes both subjective and objective elements and is based on a suspicion rather than a belief.

Obligations and powers of authorised officers

Subclause 354(4) will provide that, when exercising a power under subclauses 354(2) or 354(3) in relation to a conveyance, an authorised officer must conduct any search publicly and must not detain the conveyance for longer than is necessary and reasonable to conduct the search. In addition, paragraph 354(4)(c) will provide that an authorised officer may only use

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such force against things as is necessary and reasonable in the circumstances. This subclause is subject to subclause 354(5).

In the absence of paragraph 354(4)(c), the use of force may amount to illegally damaging someone’s property. What is necessary and reasonable will depend on the circumstances that led to the use of force and will be assessed in each case. The use of force will only be permissible if it is used against things (such as a door), and not against a person. This will ensure protection to individuals and will clarify that physical force on an individual cannot be used in the exercise of powers to enter premises. The use of force may be required to achieve the object of monitoring or investigating compliance with the Bill.

Subclause 354(5) will provide that an authorised officer must not damage the conveyance, or anything found in or on the conveyance, by forcing open a part of the conveyance or thing unless:

- the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or thing; or
- it is not possible to give that person such an opportunity.

This will be necessary in order to avoid any preventable damage to the conveyance.

PART 7—CIVIL PENALTIES

Division 1—Introduction

Clause 355 Simplified outline of this Part

Clause 355 will provide for a simplified outline of Part 7 of Chapter 10 of the Bill. Part 7 of Chapter 10 will trigger the standard civil penalty provisions set out in Part 4 of the Regulatory Powers Act. Part 4 of the Regulatory Powers Act creates a framework for the use of civil penalties to enforce civil penalty provisions of an Act or legislative instrument.

The simplified outline is included to assist the reader to understand the substantive clause of Part 7 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Civil penalties under Part 4 of the Regulatory Powers Act

Clause 356 Basic operation of civil penalties under Part 4 of the Regulatory Powers Act

Enforceable civil penalty provisions

Subclause 356(1) will provide that each civil penalty provision of the Bill will be enforceable under Part 4 of the Regulatory Powers Act. A note will be included at the end of subclause 356(1) that will advise the reader that Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

This will mean that the standard provisions in Part 4 of the Regulatory Powers Act will apply in relation to the Bill. In particular, section 85 of the Regulatory Powers Act will apply to the
civil penalty provisions in the Bill. Section 85 of the Regulatory Powers Act provides that a relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character. However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions. There are no criminal consequences associated with civil penalty orders for multiple contraventions; for example, they do not carry the possibility of imprisonment.

**Authorised applicant**

Subclause 356(2) will provide that, for the purposes of Part 4 of the Regulatory Powers Act, the Secretary will be an authorised applicant in relation to the civil penalty provisions referred to in subclause 356(1). For example, under section 82 of the Regulatory Powers Act, an authorised applicant may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

**Relevant court**

Subclause 356(3) will provide that, for the purposes of Part 4 of the Regulatory Powers Act, each relevant court (as defined in clause 12 of the Bill) is a relevant court in relation to the civil penalty provisions referred to in subclause 356(1). Clause 12 will define the term relevant court to mean the Federal Court, the Federal Circuit Court or a court of a State or Territory that has jurisdiction in relation to matters arising under the Bill.

**Extension to external Territories**

Subclause 356(4) will provide that Part 4 of the Regulatory Powers Act, as it applies in relation to a civil penalty provision referred to in subclause 356(1), will extend to every external Territory, and each other, to which the provision extends under subclause 8(2) of the Bill. This will mean that if the Bill is extended to an external Territory or an area adjacent to that external territory (such as the exclusive economic zone) then Part 4 of the Regulatory Powers Act will also apply to that extended area.

**PART 8—INFRINGEMENT NOTICES**

**Division 1—Introduction**

**Clause 358 Simplified outline of this Part**

Clause 358 will provide for a simplified outline of Part 8 of Chapter 10 of the Bill. Part 8 of Chapter 10 will incorporate the standard infringement notice provisions set out in Part 5 of the Regulatory Powers Act. Part 5 of the Regulatory Powers Act creates a framework for the use of infringement notices that may be issued in relation to a breach of an offence or civil penalty provision of an Act or a legislative instrument.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 8 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
Division 2—Infringement notices under Part 5 of the Regulatory Powers Act

Clause 359 of the Bill will apply the standard infringement notice provisions in Part 5 of the Regulatory Powers Act to 14 provisions of the Bill, as listed in the table in subclause 359(1). This will mean that the enforcement framework for infringement notices issued in relation to provisions of the Bill identified in the table in subclause 359(1) of the Bill will be provided for by Part 5 of the Regulatory Powers Act.

Of the 14 provisions of the Bill identified in the table in subclause 359(1), 13 provisions will be civil penalty provisions and the one remaining provision will be a strict liability offence. Accordingly, infringement notices will be able to be issued under the Regulatory Powers Act in relation to an identified strict liability offence and identified civil penalty provisions in the Bill. An infringement notice issued under Part 5 of the Regulatory Powers Act is a notice of a pecuniary penalty imposed on a person. It sets out the particulars of an alleged contravention of a law. An infringement notice gives the person to whom the notice is issued the option of paying the penalty set out in the notice, or electing to have the matter dealt with by a court.

There are no criminal consequences associated with infringement notices for civil penalty provisions, as infringement notices do not carry the possibility of imprisonment if the person does not pay the penalty or attend court.

Section 104 of the Regulatory Powers Act provides that an infringement notice is required to state that the person may choose not to pay the penalty and notify them that, if they do so, proceedings seeking a civil penalty order may be brought against them in a court. Therefore, the person must always be advised of the consequences of not paying the penalty and of their right to have the matter dealt with by a court. Where the infringement notice relates to a strict liability offence, if the person chooses not to pay the penalty amount in the infringement notice, they may be prosecuted.

 Clause 359 Basic provisions for infringement notices under Part 5 of the Regulatory Powers Act

Provisions subject to an infringement notice

Subclause 359(1) will provide a list of provisions of the Bill that will be able to be enforced by way of an infringement notice under Part 5 of the Regulatory Powers Act. A note will be included at the end of subclause 359(1) that will advise the reader that Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Subclause 359(2) will provide that for the operation of the Regulatory Powers Act, the Secretary will be an infringement officer. For example, under subsection 103(1) of the Regulatory Powers Act, if an infringement officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, the infringement officer may give the person an infringement notice for the alleged contravention. This will mean the Secretary will be able to issue infringement notices for alleged contraventions. Subclause 359(2) will provide that for the operation of the Regulatory Powers Act, the Secretary will be the relevant chief executive. For example, under subsection 105(1) of the Regulatory Powers Act, a person to whom an infringement notice has been given may
apply to the relevant chief executive for an extension of the period referred to in the infringement notice.

Extension to external Territories

Subclause 359(3) will provide that Part 5 of the Regulatory Powers Act, as it applies in relation to a provision of the Bill, will extend to every external Territory and each other area, to which the provision extends under subclause 8(2) of the Bill. This will mean that if the Bill is extended to an external Territory and area adjacent to that external territory (such as the exclusive economic zone) then Part 5 of the Regulatory Powers Act will also apply to that extended area.

Clause 360 Modifications of Part 5 of the Regulatory Powers Act

Clause 360 will provide for particular modifications to the operation of Part 5 of the Regulatory Powers Act.

Subclause 360(1) will provide that, instead of stating the matters referred to in paragraph 104(1)(d) of the Regulatory Powers Act, an infringement notice must state the name and contact details of the person who gave the notice, and how the person has power to issue the infringement notice. Paragraph 104(1)(d) of the Regulatory Powers Act provides that the notice must state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice.

Amount payable under the infringement notice

Subclause 360(2) will provide that the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for the alleged contravention of the provision by the person must be the least of:

- one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
- 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate; and
- if the rules specify a different number of penalty units for the alleged contravention of the provision by the person—that number of penalty units.

Subclause 360(3) will provide that the rules made under clause 432 of the Bill for the purposes of paragraph 360(2)(c) will be able to specify different numbers of penalty units for an alleged contravention of a particular provision referred to in the table in subclause 359(1) of the Bill by a person depending on whether the person is an individual or a body corporate. This will reflect the corporate multiplier for body corporates (under subsection 82(5) of the Regulatory Powers Act) in relation to the applicable number of penalty units.

PART 9—ENFORCEABLE UNDERTAKINGS

Division 1—Introduction

Clause 361 Simplified outline of this Part

Clause 361 will provide for a simplified outline of Part 9 of Chapter 10 of the Bill. Part 9 of Chapter 10 will trigger the standard enforceable undertakings provisions set out in Part 6 of...
the Regulatory Powers Act. Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions of an Act or a legislative instrument. The outline will also clarify that, in relation to an undertaking to be enforced under Part 6 of the Regulatory Powers Act, a relevant court may make orders such as an order directing compliance, an order requiring any financial benefit from the failure to comply to be surrendered, or an order for damages.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 9 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

**Division 2—Accepting and enforcing undertakings under Part 6 of the Regulatory Powers Act**

**Clause 362 Enforceable undertakings**

Clause 362 of the Bill seeks to apply the enforceable undertakings provisions in Part 6 of the Regulatory Powers Act to the provisions of the Bill.

Clause 362 of the Bill will enable the Secretary to accept and enforce undertakings relating to compliance with the offence and civil penalty provisions of the Bill. Further, if the Secretary is satisfied that a person has breached an undertaking, the Secretary may apply to a relevant court for an order relating to the undertaking.

**Enforceable provisions**

Subclause 362(1) will apply the enforceable undertakings provisions in Part 6 of the Regulatory Powers Act to the provisions of the Bill. A note will be included at the end of subclause 362(1) that will advise the reader that Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

**Authorised person**

Subclause 362(2) will provide that, for the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions referred to in subclause 362(1). For example, under section 114 of the Regulatory Powers Act, an authorised person may accept any of the following undertakings:

- a written undertaking given by a person that the person will, in order to comply with a provision enforceable under this Part, take specified action;
- a written undertaking given by a person that the person will, in order to comply with a provision enforceable under this Part, refrain from taking specified action;
- a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a provision enforceable under this Part, or is unlikely to contravene such a provision, in the future.

This will mean that the Secretary may accept any of the above undertakings.
Relevant court

Subclause 362(3) will provide that for the purposes of Part 6 of the Regulatory Powers Act, each relevant court (as defined in clause 12 of the Bill) is a relevant court in relation to the provisions referred to in subclause 362(1). Clause 12 of the Bill will define the term relevant court to mean the Federal Court, the Federal Circuit Court or a court of a State or Territory that has jurisdiction in relation to matters arising under the Bill.

Extension to external Territories

Subclause 362(5) will provide that Part 6 of the Regulatory Powers Act, as it applies in relation to a provision of the Bill, will extend to every external Territory, and each other area, to which the provision extends under subclause 8(2) of the Bill. This will mean that if the Bill is extended to an external Territory or an area adjacent to that external territory (such as the exclusive economic zone) then Part 6 of the Regulatory Powers Act will also apply to that extended area.

PART 10—INJUNCTIONS

Division 1—Introduction

Clause 363 Simplified outline of this Part

Clause 363 will provide for a simplified outline of Part 10 of Chapter 10 of the Bill. Part 10 of Chapter 10 will trigger the standard injunctions provisions set out in Part 7 of the Regulatory Powers Act. Part 7 of the Regulatory Powers Act creates a framework for the use of injunctions to enforce the provisions of an Act or a legislative instrument.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 10 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Injunctions under Part 7 of the Regulatory Powers Act

Clause 364 Injunctions

Enforceable provisions

Subclause 364(1) of the Bill will apply the injunctions provisions in Part 7 of the Regulatory Powers Act to the provisions of the Bill. Therefore, the enforcement framework for injunctions in relation to provisions of the Bill will be provided for by Part 7 of the Regulatory Powers Act. A note will be included at the end of subclause 364(1) that will advise the reader that Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions. Under Part 7 of the Regulatory Powers Act, an injunction can only be granted by a court.

Authorised person

Subclause 364(2) will provide that for the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions referred to in subclause 364(1). For example, under section 121 of the Regulatory Powers Act, if a person
has engaged, is engaging, or is proposing to engage, in conduct in contravention of a
provision enforceable under this Part, a relevant court may, on application by an authorised
person, grant an injunction:

- restraining the person from engaging in the conduct; and
- if, in the court’s opinion, it is desirable to do so—requiring the person to do a thing.

This means that, as the Secretary will be an authorised person for the purposes of Part 7 of the
Regulatory Powers Act, the Secretary will be able to apply to a relevant court for an
injunction to restrain a person from engaging in conduct that is in contravention of a provision
of the Bill.

Relevant court

Subclause 364(3) will provide that for the purposes of Part 7 of the Regulatory Powers Act,
each relevant court (as defined in clause 12 of the Bill) is a relevant court in relation to the
provisions referred to in subclause 364(1). Relevant court means the Federal Court, the
Federal Circuit Court or a court of a State or Territory that has jurisdiction in relation to
matters arising under the Bill.

Extension to external Territories

Subclause 364(4) will provide that Part 7 of the Regulatory Powers Act, as it applies in
relation to a provision of the Bill, will extend to every external Territory, and each other area,
to which the provision extends under subclause 8(2) of the Bill. This will mean that if the Bill
is extended to an external Territory or an area adjacent to that external territory (such as the
exclusive economic zone) then Part 7 of the Regulatory Powers Act will also apply to that
extended area.

PART 10A—LIABILITY OF EXECUTIVE OFFICERS AND ADVERSE PUBLICITY
ORDERS

Clause 364A  Simplified outline of this Part

Clause 364A will provide for a simplified outline of Part 10A of Chapter 10 of the Bill.
Part 10A of Chapter 10 of the Bill will provide for matters in relation to the liabilities of
executive officers of a body corporate, indemnification of executive officers of body
corporates and adverse publicity orders. Part 10A is intended to ensure that liability can be
attributed to any person who is concerned in, or takes part in, the management of a body
corporate involved in a contravention of the Bill. It recognises the extra responsibility that
executive officers have in ensuring the appropriate conduct of a body corporate and their duty
to take action to prevent contraventions of the Bill. The definition of executive officer in
clause 12 provides that both executive and non-executive directors will be subject to Part
10A.

The simplified outline is included to assist the reader to understand the substantive clauses of
Part 10A of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is
intended that the reader will rely on the substantive clauses of the Bill to which the outline
relates.
Clause 364B  Criminal liability for executive officers of bodies corporate

Clause 364B will provide that in certain circumstances an executive officer of a body corporate can be held liable for the contravention of a criminal offence by the body corporate.

The prospect of criminal liability is intended to ensure that executive officers take all reasonable steps to prevent contraventions of the Bill by bodies corporate.

In accordance with the Guide each offence should have a maximum penalty that is adequate to deter and punish a worst case offence, including repeat offenders. In addition the prescribed level of penalties must have an element of retribution or punishment, and rehabilitation in order to restore Australia’s trading reputation. The criminal penalty provisions reflect these principles.

The maximum criminal penalty will represent an appropriate sanction and reflects the seriousness of the offence within the relevant legislative scheme for regulating the control of exports. The high maximum penalty is justified because of the strong financial and commercial incentives to commit the offence, and where the consequences of the commission of the offence are particularly damaging, which may impact Australia’s trading reputation.

The increased criminal penalties are necessary to achieve the legitimate objective of maintaining overseas market access for goods exported from Australia, complying with government or industry standards or requirements relating to the goods, ensuring the integrity of the goods and to give effect to Australia’s rights and obligations. Further, the penalties are reflective of the seriousness of the conduct and the risk that contravening behaviour may pose to human, plant and animal health, the environment and trade.

Basic contravention

Subclause 364B(1) will provide that an executive officer of a body corporate commits an offence if the body corporate contravenes any of the following provisions:

(i) subclause 30(2);
(ii) subclause 33(2);
(iii) subclause 33(6);
(iv) subclause 34(2);
(v) subclause 37(2);
(vi) subclause 37(6);
(vii) subclause 38(2);
(viii) subclause 41(2);
(ix) subclause 41(5);
(x) subclause 42(2);
(xi) subclause 45(2);
(xii) subclause 45(5);
(xiii) subclause 46(2);
(xiv) subclause 47(2);
(xv) subclause 48(2);
(xvi) subclause 49(2);
(xvii) subclause 184(2);
(xviii) subclause 184(6);
(xix) subclause 217(2);
The officer knew, or was reckless or negligent as to whether, the contravention would occur; and

- the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

- the officer failed to take all reasonable steps to prevent the contravention.

The criminal penalty is imprisonment for 8 years or 480 penalty units, or both.

Contravention involving intention to obtain commercial advantage or economic consequences for Australia

Subclause 364B(2) will provide that an executive officer of a body corporate commits an offence if the body corporate contravenes any of the following provisions:

(i) subclause 31(2);
(ii) subclause 32(2);
(iii) subclause 35(2);
(iv) subclause 36(2);
(v) subclause 39(2);
(vi) subclause 40(2);
(vii) subclause 43(2);
(viii) subclause 44(2);

and:

- the officer knew, or was reckless or negligent as to whether, the contravention would occur; and

- the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

- the officer failed to take all reasonable steps to prevent the contravention.

The criminal penalty is imprisonment for 8 years or 480 penalty units, or both.

Contravention involving making false or misleading representation about non-prescribed goods that are entered for export

Subclause 364B(3) will provide that an executive officer of a body corporate commits an offence if the body corporate contravenes subclause 50(2) and:

- the officer knew, or was reckless or negligent as to whether, the contravention would occur; and
• the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

• the officer failed to take all reasonable steps to prevent the contravention.

The criminal penalty is imprisonment for 5 years or 300 penalty units, or both.

Reasonable steps to prevent contravention

Subclause 364B(4) will set out the matters that the court may have regard to when determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention under paragraphs 364B(1)(d), (2)(d) and (3)(d). These include any action taken by the officer directed towards ensuring that:

• the body corporate arranges professional assessments of the body corporate’s compliance with the offence provisions specified under paragraphs 364B(1)(a), (2)(a) and (3)(a);

• the body corporate implements any appropriate recommendations arising from any assessments;

• the body corporate’s employees, agents and contractors have reasonable knowledge and understanding of any requirements to comply with the offence provisions specified under paragraphs 364B(1)(a), (2)(a) and (3)(a);

• the body corporate had in place adequate procedures to prevent the contravention.

Additionally, the court may consider any action taken by the officer once the officer became aware of the contravention.

Reasonable steps are generally a question of fact determined on a case by case basis.

Subclause 364B(5) will provide that subclause 364B(4) does not limit 364B(1), (2) or (3).

Clause 364C Civil liability for executive officers of bodies corporate

Clause 364C will provide that in certain circumstances an executive officer of a body corporate can be held liable for the contravention of a civil penalty provision by the body corporate. It will complement the criminal offence in clause 364B.

These civil penalties reflect the extra responsibility that executive officers have in ensuring the appropriate conduct of a body corporate and their duty to take action to prevent contraventions of the Bill. It is intended to ensure that executive officers take all reasonable steps to prevent contraventions of the Bill by bodies corporate, without resorting to criminal prosecution.

The overriding purpose of these civil penalties will be to deter the reoccurrence of the offending conduct, whether by the same or a different person. This principle underpins the Parliament’s approach when setting the level of civil penalties in legislation and reflects the Parliamentary intention that the primary purpose of civil penalties is deterrence. Unlike criminal penalties, civil penalty proceedings are not concerned with retribution and rehabilitation but are primarily, if not wholly, protective in promoting the public interest in compliance.
The civil penalties reflect the underlying principle of deterrence. That is, if a person believes they are likely to be ordered to pay a substantial penalty if they contravene the Bill, and that penalty exceeds the actual or anticipated profit the person could expect to earn from the contravening conduct, then the person will make a rational decision that it is not worthwhile to engage in the contravening conduct.

The Bill will seek to prescribe a penalty that will have a meaningful deterrent effect. For example, a penalty that will not be seen as simply an acceptable cost of doing business. The penalty should confirm that such conduct will not be rewarded and that the penalty will outweigh any potential benefit.

Basic contravention

Subclause 364C(1) will provide that an executive officer of a body corporate is liable to a civil penalty if the body corporate contravenes any of the following provisions:

(i) subclause 30(4);
(ii) subclause 33(4);
(iii) subclause 33(8);
(iv) subclause 34(4);
(v) subclause 37(4);
(vi) subclause 37(8);
(vii) subclause 38(4);
(viii) subclause 41(3);
(ix) subclause 41(6);
(x) subclause 42(4);
(xi) subclause 45(3);
(xii) subclause 45(6);
(xiii) subclause 46(5);
(xiv) subclause 47(5);
(xv) subclause 48(4);
(xvi) subclause 49(4);
(xvii) subclause 184(4);
(xviii) subclause 184(8);
(xix) subclause 217(4);
(xx) subclause 217(8);
(xxi) subclause 320(4);
(xxii) subclause 427A(3)

and:

- the officer knew, or was reckless or negligent as to whether, the contravention would occur; and
- the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- the officer failed to take all reasonable steps to prevent the contravention.

The civil penalty is 960 penalty units.
Contravention involving intention to obtain commercial advantage or economic consequences for Australia

Subclause 364C(2) will provide that an executive officer of a body corporate is liable to a civil penalty if the body corporate contravenes any of the following civil penalty provisions:

(i) subclause 31(5);
(ii) subclause 32(5);
(iii) subclause 35(5);
(iv) subclause 36(5);
(v) subclause 39(5);
(vi) subclause 40(5);
(vii) subclause 43(5);
(viii) subclause 44(5);

and:

- the officer knew, or was reckless or negligent as to whether, the contravention would occur; and
- the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- the officer failed to take all reasonable steps to prevent the contravention.

The civil penalty is 10,000 penalty units.

Subclause 364C(3) will provide that an executive officer of a body corporate is liable to a civil penalty if

- the body corporate contravenes subclause 50(4); and
- the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
- the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- the officer failed to take all reasonable steps to prevent the contravention.

The civil penalty is 600 penalty units.

Recklessness

Subclause 364C(4) will define recklessness for the purposes of subclauses (1), (2) and (3). An executive officer was reckless as to whether a contravention would occur where the officer is aware of a substantial risk that the contravention would occur, and having regard to the circumstances known to the officer, it was unjustifiable to take the risk.

Negligence
Subclause 364C(5) will define negligence for the purposes of subclauses (1), (2) and (3). An executive officer was negligent as to whether the contravention would occur where the officer’s conduct involves such a great falling short of the standard of care that a reasonable person would exercise in the circumstances, and there was such a high risk that the contravention would occur, the conduct warrants a penalty being imposed.

*Reasonable steps to prevent contravention*

Subclause 364C(6) outlines some of the matters a court may have regard to in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, which is not exhaustive.

Subclause 364C(7) will provide that subclause 364C(6) does not limit subclauses 364C(1), (2) or (3).

**Clause 364D  Civil penalty – indemnification of executive officers**

Clause 364D will provide that a body corporate must not indemnify an executive officer against liabilities incurred under clauses 364B or 364C or legal costs relating to any such liability. This clause, along with the other amendments relating to the liability of executive officers, seeks to ensure that the body corporate cannot induce an executive officer into conduct that is reckless or negligent by attempting to protect the executive officer from liability. It will provide that a body corporate (the first body), or a related body corporate, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against either of the following liabilities incurred by the person as an executive officer of the first body:

- a liability to pay a penalty under clauses 364B or 364C;
- legal costs incurred in defending or resisting proceedings (including any related appeals) in which the person is found to have such a liability.

A body corporate that engages in conduct contrary to clause 364D will be liable to a civil penalty of 25 penalty units. This is consistent with current penalties on the Commonwealth statute books (e.g. *Competition and Consumer Act 2010* section 77A).

The overriding purpose of the new civil penalties will be to deter the reoccurrence of the offending conduct, whether by the same or a different person. This principle underpins the Parliament’s approach when setting the level of civil penalties in legislation and reflects the Parliamentary intention that the primary purpose of civil penalties is deterrence. Unlike criminal penalties, civil penalty proceedings are not concerned with retribution and rehabilitation but are primarily, if not wholly, protective in promoting the public interest in compliance.

The civil penalties reflect the underlying principle of deterrence. That is, if a person believes they are likely to be ordered to pay a substantial penalty if they contravene the Bill, and that penalty exceeds the actual or anticipated profit the person could expect to earn from the contravening conduct, then the person will make a rational decision that it is not worthwhile to engage in the contravening conduct.
The legislation will seek to prescribe a penalty that will have a meaningful deterrent effect. For example, a penalty that will not be seen as simply an acceptable cost of doing business. The penalty should confirm that such conduct will not be rewarded and that the penalty will outweigh any potential benefit.

**Clause 364E  Certain indemnities not authorised and certain documents void**

Clause 364E will provide that certain indemnities are not authorised and certain documents are void. This clause will provide that clause 364D does not authorise anything that would otherwise be unlawful and that anything that purports to indemnify a person against liability is void to the extent that it contravenes clause 364D. This includes anything that purports to indemnify a person in contravention of clause 364D. It is appropriate for the legislation to emphasise the need to deter individuals from engaging in anti-competitive conduct.

**Clause 364F  Adverse publicity orders**

Clause 364F will provide for adverse publicity orders. Subclause 364F(1) will empower a court, on application by the Secretary, or on its own initiative, to make an adverse publicity order against a person who has been ordered to pay a penalty for a contravention of a provision of the Bill, or been found guilty of an offence against a provision of the Bill.

Subclause 364F(2) will empower a court, on application by the Director of Public Prosecutions, to make an adverse publicity order in relation to a person who has been found guilty of an offence against a provision of the Bill.

Paragraph 364F(3)(a) will provide that an adverse publicity order, in relation to a person, is an order that requires the person to take either or both of the following actions within the period specified in the order:

- disclose, in the way and to the persons specified in the order, details of the relevant contravention or offence, its consequences, the penalty imposed and any other related matter;
- publish, at the person’s expense and in the way specified in the order, details of the relevant contravention or offence, its consequences, the penalty imposed and any other related matter.

Paragraph 364F(3)(b) will provide that an adverse publicity order, in relation to a person, is an order that requires the person give the Secretary evidence within 14 days after the end of the period specified in the order that the action or actions were taken by the person in accordance with the order.

Subclause 364F(4) will provide that clause 364 does not limit a court’s powers under any other provision of the Bill.

Adverse publicity orders enable examples of non-compliance to be drawn to the public’s attention. Such orders can draw public attention to a particular wrongdoing and can be an effective deterrent for an organisation that is concerned about its reputation. The prospect of adverse publicity is intended to incentivise compliance with the provisions of the Bill. Failure to comply with an adverse publicity order may attract administrative sanctions, such as suspension or revocation of an approved arrangement.
PART 11—MISCELLANEOUS

Division 1—Introduction

Clause 365  Simplified outline of this Part

Clause 365 will provide for a simplified outline of Part 11 of Chapter 10 of the Bill. Part 11 of Chapter 10 of the Bill will set out matters in relation to:

- the ability of an authorised officer to be assisted by other persons when exercising powers and performing functions or duties under Part 4, 5 or 6 of Chapter 10 of the Bill;
- civil penalty provisions for false or misleading statements in applications and false or misleading information or documents;
- the application of special rules in relation to offence and civil penalty provisions;
- the Secretary’s obligation to consider whether a person is a fit and proper person (see Division 5 of Part 11 of Chapter 10 of the Bill) in relation to certain decisions made under the Bill;
- the obligation of certain persons to notify the Secretary if they, or any of their associates, are convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty.

The simplified outline is included to assist the reader to understand the substantive clauses of Part 11 of Chapter 10 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Persons assisting authorised officers

Clause 366  Persons assisting authorised officers

Authorised officers may be assisted by other persons

Subclause 366(1) will provide that an authorised officer may be assisted by other persons in exercising powers and performing functions or duties under Part 4 (entry to adjacent premises), 5 (entering and exercising powers on premises without a warrant or consent) or 6 (powers in emergency situations) of Chapter 10, if that assistance is necessary and reasonable. A person giving such assistance is a person assisting the authorised officer.

Allowing a person assisting to exercise powers will support the authorised officer in the exercise of their powers to monitor and investigate compliance with the Act. It is necessary to confer certain powers on a person assisting an authorised person or authorised officer for the following reasons:

- no other authorised person or authorised officer may be available to assist;
- the premises that are subject to monitoring or investigation may be large;
- there may be a large number of documents or material that needs to be reviewed;
- there may be a large number of things on the premises that need to be searched, or inspected, examined or sampled;
- the person assisting may be more familiar with the premises, or have particular skills or knowledge that would enable the authorised person or authorised officer to effectively exercise their powers and perform their functions or duties;
- things may be heavy or difficult to move without assistance.

**Powers of a person assisting the authorised officer**

Subclause 366(2) will provide that a person assisting the authorised officer:

- may enter premises, if it is necessary for the authorised officer to enter those premises to exercise powers under Part 4, 5 or 6; and
- may exercise powers under those Parts for the purpose of assisting the authorised officer; and
- must enter premises and exercise powers in accordance with any direction given to the person assisting by the authorised officer.

Three notes will be included at the end of subclause 366(2). Note 1 will provide that premises includes a conveyance (see paragraph (a) of the definition of premises in clause 12 of the Bill). Note 2 will clarify that a person assisting an authorised officer who has entered premises under clause 347 of the Bill will be able to use such force against things as is necessary and reasonable in the circumstances (see clause 349 of the Bill). Note 3 will provide that a direction given under paragraph 366(2)(c) in writing is not a legislative instrument and will refer the reader to subclause 309(4) of the Bill.

**Powers exercised in assisting an authorised officer**

Subclause 366(3) will provide that a power exercised by a person in assisting an authorised officer as referred to in this clause is taken for all purposes to have been exercised by the authorised officer. This will mean that a person assisting an authorised officer will have the protections afforded to an authorised officer under clause 424 of the Bill.

**Division 3—Civil penalty provisions for false or misleading information or documents**

**Clause 367 Civil penalty provision for false or misleading statements in applications**

Subclause 367(1) will provide that a person is liable to a civil penalty if the person makes a statement (whether orally, in a document or in any other way) in, or in connection with, an application made under the Bill, and the person does so knowing that the statement:

- is false or misleading; or
- omits any matter or thing without which the statement is misleading.

A civil penalty of 960 penalty units will apply in such circumstances. The level of penalty will encourage persons to take care that the information in an application is accurate and is not misleading by including or omitting something.

The penalties are designed to encourage persons to provide correct statements in applications and not to include a statement that is false or misleading when the person knows that the statement is false or misleading. Providing false or misleading statements may result in an application being accepted in a situation where, had the statement not been false or misleading, the application would not have been accepted. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill.
Subclause 367(2) will provide that subclause 367(1) will not apply as a result of subparagraph 367(1)(b)(i) if the statement is not false or misleading in a material particular. A note will be included at the end of subclause 367(2) that will provide that a defendant bears an evidential burden in relation to the matter in this subclause and will refer the reader to section 96 of the Regulatory Powers Act. This will mean that minor errors will not be subject to civil penalty proceedings.

Subclause 367(3) will provide that subclause 367(1) will not apply as a result of subparagraph 367(1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular. A note will be included at the end of subclause 367(2) that will provide that a defendant bears an evidential burden in relation to the matter in this subclause and will refer the reader to section 96 of the Regulatory Powers Act. This will mean minor errors will not be subject to civil penalty proceedings.

**Clause 368 Civil penalty provision for false or misleading information**

Subclause 368(1) will provide that a person will be liable to a civil penalty if the person gives information in compliance or purported compliance with the Bill and the person does so knowing that the information:

- is false or misleading; or
- omits any matter or thing without which the information is misleading.

A civil penalty of 960 penalty units will apply in such circumstances. The level of penalty will encourage persons to take care that the information they provide is accurate and is not misleading by including or omitting something.

The penalties are designed to encourage persons to provide correct information and not to include any information in compliance or purported compliance with the Bill that is false or misleading when the person knows that the information is false or misleading. Providing false or misleading information may result in the Secretary acting on the information in a particular way in a situation where, had the information not been false or misleading, the Secretary may have acted in a different way. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill.

Subclause 368(2) will provide that subclause 368(1) will not apply as a result of subparagraph 368(1)(b)(i) if the statement is not false or misleading in a material particular. A note will be included at the end of subclause 368(2) that will provide that a defendant bears an evidential burden in relation to the matter in this subclause and will refer the reader to section 96 of the Regulatory Powers Act. This will mean that minor errors will not be subject to civil penalty proceedings.

Subclause 368(3) will provide that subclause 368(1) will not apply as a result of subparagraph 368(1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular. A note will be included at the end of subclause 368(2) that will provide that a defendant bears an evidential burden in relation to the matter in this subclause and will refer the reader to section 96 of the Regulatory Powers Act. This will mean that minor errors will not be subject to civil penalty proceedings.

Subclause 368(4) will provide that subclause 368(1) will not apply if, before the information was given by a person to another person (the official) in compliance or purported compliance with the Bill, the official did not take reasonable steps to inform the person that the person
may be liable to a civil penalty for contravening subclause 368(1). A note will be included at the end of subclause 368(2) that will provide that a defendant bears an evidential burden in relation to the matter in this subclause and will refer the reader to section 96 of the Regulatory Powers Act. This will alert the person to the consequences of giving false or misleading information and will apply, for example, when a person is asked to provide information during the course of an audit or inspection.

Subclause 368(5) will provide that for the purposes of subclause 368(4), it will be sufficient if the following form of words is used: ‘You may be liable to a civil penalty for giving false or misleading information’.

Clause 369 Civil penalty provision for false or misleading documents

Subclause 369(1) will provide that a person is liable to a civil penalty if the person produces a document to another person and the person does so knowing that the statement is false or misleading. The civil penalty provision will only apply if the document is produced in compliance or purported compliance with the Bill.

A civil penalty of 960 penalty units will apply in such circumstances. The level of penalty will encourage persons to take care that the information they provide is accurate and is not misleading by including or omitting something.

The penalties are designed to encourage persons to provide correct documents and not to provide documents in compliance or purported compliance with the Bill when the person knows that the document is false or misleading. Providing false or misleading documents may result in the Secretary acting on the documents in a particular way in a situation where, had the document not been false or misleading, the Secretary would have acted differently. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill.

Subclause 369(2) will provide that subclause 369(1) will not apply if the document is not false or misleading in a material particular. A note will be included at the end of subclause 369(2) that will provide that a defendant bears an evidential burden in relation to the matter in this subclause and will refer the reader to section 96 of the Regulatory Powers Act. This will mean that minor errors will not be subject to civil penalty proceedings.

Subclause 369(3) will provide that subclause 369(1) will not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

This will enable a person to disclose that they have become aware of the false or misleading content of a document after the document was provided. This will enable the person to avoid civil penalty proceedings and will be an incentive to provide accurate information, even if that information corrects earlier false information.
Division 4—General rules about offences and civil penalty provisions

Clause 370   Physical elements of offences

Subclause 370(1) will be an application provision that will provide that clause 370 will apply if a provision of the Bill provides that a person contravening another provision of the Bill (the conduct rule provision) commits an offence. There will be a number of clauses in the Bill that will provide that a person commits an offence if the person contravenes another provision of the Bill (generally an earlier subclause in the same clause). For example, clause 427 of the Bill will create an offence of hindering compliance with the Bill. The elements of the offence will be set out in subclause 427(1) of the Bill while the offence is set out in subclause 427(2) of the Bill.

Subclause 370(2) will provide that for the purposes of applying Chapter 2 of the Criminal Code to the offence, the physical elements of the offence are set out in the conduct rule provision. In the example above, this will be subclause 427(1) of the Bill.

A note will be included at the end of subclause 370(2) that will advise the reader that Chapter 2 of the Criminal Code sets out general principles of criminal responsibility.

Clause 371   Contravening an offence provision or a civil penalty provision

Subclause 371(1) will be an application provision that will provide that clause 371 will apply if a provision of the Bill provides that a person contravening another provision of the Bill (the conduct provision) commits an offence or is liable to a civil penalty. For example, subclause 30(1) of the Bill will provide that a person contravenes that subclause if the person exports goods and either:

- the goods are permanently prohibited goods; or
- the export of the goods is prohibited absolutely by a temporary prohibition determination.

Subclause 371(2) will provide that for the purposes of the Bill, and the Regulatory Powers Act to the extent that it relates to the Bill, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision. To remove any doubt, clause 371 will clarify that contravention of the obligations may constitute a criminal offence, or may give rise to a civil penalty (as the case requires).

Division 5—Fit and proper person test

Clause 372   Fit and proper person test

Clause 372 of the Bill will provide the Secretary with the ability to apply a fit and proper person test. Persons will be required to notify the Secretary if they have been convicted of an offence, or ordered to pay a pecuniary penalty (clause 374 of the Bill), which will enable the Secretary to take this into account when applying the fit and proper person test.

The fit and proper person test is necessary for the legitimate objective of ensuring that persons who are approved to export goods from Australian territory are persons that are trustworthy and demonstrate the required integrity necessary to uphold Australia’s trading reputation.
Participation in Australia’s agricultural export markets is not a right; participation is a privilege, granted by the Commonwealth to suitable persons. A person seeking the benefit of participation in those markets will do so in the knowledge that the existence of certain ‘associations’ may result in the rejection of an application, or suspension, variation or revocation of a licence, arrangement or accreditation.

Business associates and others may have influence over the primary person such that they may be able to compel them to undertake illegal activities on their behalf, through inducement or other means. Putting a fit and proper person test in place will notify the Department of any associates of the primary person who may pose a risk and will allow the Department to take action to ensure Australia’s agricultural exports will not be compromised.

Clause 372 of the Bill will specify that the fit and proper person test will apply for the purposes of decisions in relation to registered establishments, approved arrangements and export licences. They will not be requirements that will be placed on the general public—that is, they will only extend to persons who are voluntarily seeking to benefit from exporting agricultural goods from Australian territory. Additional provisions of the Bill applying the fit and proper persons test will be required to be specified in the rules made under clause 432 of the Bill.

Clause 372 of the Bill will apply for the purposes of determining whether a person is a fit and proper person in relation to a number of the export regulatory controls provided for in the Bill. This will also include any other provisions that will be prescribed by the rules. Enabling the rules to prescribe other persons or circumstances in which a person will be required to be fit and proper will provide the Secretary with the flexibility to determine when another person in the supply chain should satisfy this requirement. This may be on a commodity-specific basis. Having the category of persons listed in the rules will also provide transparency in relation to who will be required to be fit and proper in circumstances other than those that will be set out in subclause 372(1).

Subclause 372(2) will provide that, subject to subclause 372(4), in determining whether a person is a fit and proper person, the Secretary must have regard to the matters listed in paragraph 372(2)(a):

- whether the person, or an associate of the person, has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any of the following:
  - the Bill or the repealed *Export Control Act 1982*;
  - the *Australian Meat and Live-stock Industry Act 1997*;
  - the Biosecurity Act or the repealed *Quarantine Act 1908*;
  - the *Imported Food Control Act 1992*;
  - the *Illegal Logging Prohibition Act 2012*;
  - another Act prescribed by the rules;
  - the *Criminal Code* or the Crimes Act, to the extent that it relates to the Bill, the Biosecurity Act or another Act that will be prescribed by the rules.

Enabling the rules to prescribe other Acts, the contravention of which will be relevant to determining whether a person is a fit and proper person, will provide the Secretary with the necessary flexibility to identify other contraventions that may impact on the suitability of the person to engage in export operations. This could, for example, include a State Act that relates to food safety and hygiene.
Subclause 372(2) will also provide that in determining whether a person is a fit and proper person, the Secretary will be required to have regard to the following matters:

- whether a debt is due and payable by the person, or an associate of the person, to the Commonwealth under one of the Acts in paragraph 372(2)(a);
- whether the person or an associate of the person, made a false or misleading statement in an application under the Bill or gave false or misleading information or documents to the Secretary or to another person performing functions or duties or exercising powers under the Bill. This could include, for example, information given to an auditor or an assessor;
- whether the person or an associate of the person gave false or misleading information or documents to the Secretary or the Department under a prescribed agriculture law. A prescribed agriculture law will mean a law (other than the Bill) that is administered by the Minister and is prescribed by the rules. Enabling the rules to prescribe other agriculture laws under which false or misleading information may have been given will be relevant to determining whether a person is a fit and proper person and will provide the Secretary with the necessary flexibility to identify other contraventions that may impact the suitability of the person to engage in export operations.
- whether the person, or an associate of the person, has contravened an Act referred to in paragraph 37(2)(a).
- whether the person, or an associate of the person, has had an application to accredit a property, register an establishment, approve an arrangement, or obtain an export licence refused under the Bill (but not where an application has been deemed to be refused under subclause 379(2)), under the Australian Meat and Live-Stock Industry Act 1997 or the repealed Export Control Act 1982. The rules may also prescribe other applications under the Bill. Enabling the rules to prescribe other applications, the refusal of which will be relevant to determining whether a person is a fit and proper person, will provide the Secretary with the necessary flexibility to identify other refusals that may impact on the suitability of the person to engage in export operations.

The Secretary may also have regard to:

- whether the person, or an associate of the person, is or was the manager of an accredited property that has had its accreditation suspended in whole or in part, or revoked;
- whether the person, or an associate of the person, is or was the occupier of an establishment that has had its registration suspended in whole or in part, or revoked;
- whether the person, or an associate of the person, is or was the holder of an approved arrangement that was suspended in whole or in part, or revoked;
- whether the person, or an associate of the person, is or was the holder of an export licence that was suspended in whole or in part, or revoked.

The Secretary will also be able to have regard to any other matters prescribed by the rules made for the purposes of determining whether a person is fit and proper. Enabling the rules to prescribe any other matter will provide the Secretary with flexibility to identify other matters that may be relevant to determining the suitability of the person to engage in export operations.

Subclause 372(3) will provide that in determining whether the person is a fit and proper person, the Secretary will also be able to have regard to the following matters:
- whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law (other than an Act referred to in paragraph 372(2)(a));
- the interests of the industry, or industries, that relate to the person’s export business;
- any other relevant matter.

Subclause 327(4) will modify the application of the associates test in relation to determining whether a person is a fit and proper person, for certain applications (where the applicant is a natural person making an application for a role that could only be performed by a natural person). Subclause 327(4) will provide that for the purposes of determining whether a person who:

(a) carries out export operations, or performs functions or duties or exercises powers under the Bill; and
(b) is prescribed by the rules;

is a fit and proper person for the purposes of a provision of the Bill, subclause 327(2) applies as if the references to an associate of the person were omitted. The purpose of this provision is to ensure that where the consideration of a person’s associates is not a relevant matter (for example, an approved auditor), the Secretary is not required to have regard to it. This ensures that the level of regulatory impact is commensurate with the type of risk being managed. Subparagraph 372(3)(c) also provides that the Secretary may have regard to any relevant matter.

Subclause (5) will provide that rules must not be made for the purposes of paragraph (4)(b) prescribing:

- an applicant seeking to register an establishment;
- the occupier of a registered establishment; or
- a person who is required by rules made for the purposes of section 373 to be a fit and proper person.

This provision ensures that the associates test must apply to those persons. While subclause 372(4) enables the associates test to not apply in prescribed circumstances, subclause 372(5) excludes these particular roles (for example, the occupier of a registered establishment). This ensures that the Secretary must always have regard to a person’s associates in relation to these roles. It is appropriate that the Secretary has regard to a person’s associates in relation to these persons, given the functions and influence that holders of these roles have within the export framework.

Subclause 372(6) will provide that the matters in paragraphs 372(2)(e) to (i) will not be able to be taken into account in determining whether the person is fit and proper if the decision to refuse, suspend or revoke was set aside on review. Subclause 372(7) will make it clear that nothing in clause 372 will affect the operation of Part VIIC of the Crimes Act (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**Clause 373 Rules may prescribe kinds of persons that are required to be fit and proper persons for the purposes of Chapter 5 or 6**

Subclause 373(1) will provide that the rules made under clause 432 of the Bill will be able to prescribe kinds of persons who will be required, for the purposes of Chapter 5 (approved arrangements) or Chapter 6 (export licences), to be fit and proper persons (having regard to
the matters referred to in clause 372 of the Bill). Enabling the rules to prescribe when other persons will be required to be fit and proper persons will provide the Secretary with the flexibility to determine when another person in the supply chain should satisfy this requirement. This may be on a commodity-specific basis. Having the category of persons listed in the rules will also provide transparency in relation to who will be required to be fit and proper in circumstances other than those that will be set out in subclause 372(1) of the Bill.

Subclause 373(2) will provide examples of what the rules made for the purposes of subclause 373(1) may prescribe. This will include prescribing persons who will be required to be fit and proper by reference to a kind of export operations carried out, or to be carried out, by persons of that kind in accordance with an approved arrangement or under an export licence (as the case requires).

**Clause 374 Notification of conviction of offence or order to pay pecuniary penalty**

Subclause 374(1) will be an application provision that will set out when clause 374 will apply. Subclauses 374(4) and (5) will set out what will be the consequences of clause 374 applying to a particular person.

Clause 374 will apply to the following persons:

- an applicant for the accreditation of a property under clause 78 of the Bill;
- the manager of an accredited property;
- an applicant for the registration of an establishment under clause 111 of the Bill, and any other person who manages or controls, or would manage or control, export operations carried out in relation to prescribed goods at the establishment;
- the occupier of a registered establishment, and any other person who manages or controls export operations carried out in relation to prescribed goods at the establishment;
- subject to subclause 374(2), each of the following:
  - an applicant for approval of a proposed arrangement under clause 150 of the Bill, and any person who is to manage or control or carry out export operations covered by the proposed arrangement;
  - the holder of an approved arrangement;
  - a person who manages or controls or carries out export operations covered by an approved arrangement;
- subject to subclause 374(3), each of the following:
  - an applicant for an export licence under clause 190 of the Bill, and a person who participates, or would participate, in the management or control of the applicant’s export business or proposed export business (as provided by clause 220 of the Bill);
  - the holder of an export licence;
  - a person who participates or would participate in the management or control of the applicant’s export business or proposed export business (as provided by clause 220 of the Bill);
- any other person who carries out export operations, or performs functions or duties or exercises powers under the Bill and is prescribed by the rules.

Enabling the rules made under clause 432 of the Bill to prescribe that clause 374 will apply to any other person who carries out export operations or performs functions or duties or
exercises powers under the Bill, will provide the Secretary with flexibility to address future changes in who may conduct export operations or undertake those functions or duties or exercise those powers.

Subclause 374(2) will provide that clause 374 will only apply to:

- an applicant for approval of a proposed arrangement under clause 150 of the Bill, and a person who manages or controls or carries out export operations covered by the proposed arrangement;
- an applicant for renewal of an approved arrangement under clause 155 of the Bill;
- the holder of an approved arrangement; or
- a person who manages or controls or carries out export operations covered by an approved arrangement;

if the person is a kind of person who is required by rules made for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 5 (approved arrangements). Enabling the rules to prescribe when such a person will be required to be fit and proper will provide the Secretary with the flexibility that is necessary to specify when this is a requirement. This may, for example, be on a commodity-specific basis.

Subclause 374(3) will only apply to:

- an applicant for an export licence under clause 190 of the Bill, and a person who participates, or would participate, in the management or control of the applicant’s export business or proposed export business (as provided by clause 220 of the Bill);
- an applicant for renewal of an export licence under clause 195 of the Bill;
- the holder of an export licence;
- a person who participates or would participate in the management or control of the applicant’s export business or proposed export business (as provided by clause 220 of the Bill);

only if the person is a kind of person who is required by rules made under clause 374 of the Bill for the purposes of clause 373 of the Bill to be a fit and proper person for the purposes of Chapter 6 of the Bill (export licences). Enabling the rules to prescribe when such a person will be required to be fit and proper will provide the Secretary with the flexibility that is necessary to specify when this is a requirement. This may, for example, be on a commodity-specific basis.

Subclause 374(4) will provide that if a person to whom clause 374 will apply is convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Secretary, in writing, of the conviction or order as soon as practicable after the person is convicted or the order is made.

Subclause 374(5) will provide that if a person to whom clause 374 will apply becomes aware that an associate of the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Secretary, in writing, of the conviction or order as soon as practicable after the person becomes aware of the conviction or order.

Subclause 374(6) will provide a civil penalty of 60 penalty units for an individual that fails to comply with the requirements that will be set out in subclauses 374(4) and 374(5). The
penalty for a body corporate will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply. The level of penalty is intended to encourage persons to provide the required information to the Secretary so that the Secretary will be aware of all information about the person and will be able to make an informed assessment of their capacity to continue to be engaged in export operations.

When prescribed persons are convicted of certain offences or ordered to pay certain pecuniary penalties under Australian law (including a law of a State or Territory), clause 374 will create a requirement that they notify the Secretary as soon as is practicable. A person may be liable to a civil penalty if they contravene the notification requirement.

Subclause 374(7) will provide that nothing in clause 374 will affect the operation of Part VIIC of the Crimes Act (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

Chapter 11—Miscellaneous

PART 1—MATTERS RELATING TO APPLICATIONS

Division 1—Introduction

Clause 375 Simplified outline of this Part

Clause 375 will provide a simplified outline of Part 1 of Chapter 11 of the Bill. Part 1 of Chapter 11 of the Bill will provide for matters in relation to applications under Chapters 3 (accredited properties), 4 (registered establishments), 5 (approved arrangements) and 6 (export licences) of the Bill. It will also set out that an application must comply with certain requirements and the obligations of the person making the application to provide additional and corrected information. It will also provide that the Secretary must make a decision on the application, the timeframes for doing so and the powers the Secretary may exercise when making a decision.

The simplified outline will be included to assist the reader to understand the substantive clauses of Part 1 of Chapter 11; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which this outline relates.

Division 2—Matters relating to certain applications

Clause 376 Applications to which this Division applies

Subclause 376(1) will specify the applications to which the common provisions in Division 2 of Part 1 of Chapter 11 of the Bill will apply. These will be an application to accredit a property, or to renew or vary that accreditation; an application to register an establishment, or to renew or vary that registration; an application for an approved arrangement, or to renew or vary that arrangement; and an application for an export licence, or to renew or vary that licence.

The provisions in this Part are intended to reduce duplication of common provisions in the Bill and will ensure matters related to applications are dealt with consistently.
Subclause 376(2) will note that clause 379 of the Bill (dealing with applications) will also apply in relation to an application to approve a significant variation to an approved arrangement that will be taken to have been made under subclause 166(2) of the Bill.

Clause 377 Requirements for applications

Subclause 377(1) will set out the requirements for applications to which this Division will apply. Applications must:

- if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner;
- if the Secretary has approved a form for making the application—include the information required by the form and be accompanied by any documents required by the form;
- include the information (if any) prescribed by the rules; and
- be accompanied by any documents prescribed by the rules.

The manner of the application approved by the Secretary could, for example, include the ability to make an application electronically.

Enabling the rules to prescribe any information or documents that must accompany an application will ensure that the Secretary has access to relevant information and documents available when considering an application. This flexibility will be necessary to accommodate the range of applications to which this provision may relate and the likelihood that there will be different information requirements in relation to each application.

A note will be included at the end of subclause 377(1) that will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents and will refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill. The note will clarify that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents. The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons providing false or misleading information or documents, which is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Subclause 377(2) will deal specifically with applications in relation to approved arrangements. This subclause will provide that, in addition to any requirements under subclause 377(1), the proposed arrangement, approved arrangement, approved arrangement to be renewed or proposed varied arrangement (as the case may be) must accompany the application, or otherwise be made available to the Secretary for evaluation. This will be designed to prevent the need for the applicant to actually submit the proposed arrangement, which may be very lengthy and comprise a number of separate documents.

Subclause 377(3) will enable the Secretary to accept any information or document previously given to the Secretary in connection with any application made under the Bill, or a notice of intention to export previously given under the Bill, as satisfying any requirement to provide that information or document under subclause 377(1). For example, if the applicant has previously made an application to register an establishment and is now applying to approve an arrangement, the Secretary may refer to information provided in relation to the application to
register an establishment for the purpose of deciding the application to approve an
arrangement. This provision is intended to reduce the burden on applicants by removing the
requirement to resubmit information.

Subclause 377(4) will provide that an application is taken not to have been made if the
application does not comply with the requirements referred to in subclauses 377(1) and
377(2). This clause will make it clear that incomplete applications do not need to be dealt
with in the manner provided for by clause 379 of the Bill (dealing with applications). This
will mean that, for example, the Secretary will not be required to make a decision on the
application if it is incomplete.

Subclause 377(5) will be an avoidance of doubt provision. It will clarify that the Secretary
will be able to approve different forms for applications for different kinds of establishments,
properties, export operations or prescribed goods, or a single form for more than one kind of
application.

**Clause 378 Additional or corrected information**

Subclause 378(1) will create an obligation on a person who has made an application to which
this Division applies to provide additional or corrected information to the Secretary if the
person becomes aware that the information provided in the application was incomplete or
incorrect or a change prescribed by the rules occurs.

This provision will ensure that the Secretary has all relevant and correct information at hand
in relation to an application so that the Secretary may make an informed decision in relation
to the application.

Enabling the rules to prescribe a change for which it is necessary for a person to provide
additional or corrected information will give the Secretary flexibility to determine the changes
that may be relevant to the Secretary’s decision in relation to the application. The ability to
prescribe these circumstances in the rules reflects the likelihood that the circumstances
prescribed will change from time to time and will need to commence at short notice.

Subclause 378(2) will set out the circumstances where the provision of additional or corrected
information will be required. This will include where the information is relevant to the
Secretary’s consideration of the application. Additional or corrected information that will not
be relevant to the Secretary’s consideration of an application will not need to be provided.

Subclause 378(2) will also require that a person who has made an application must give the
Secretary the additional or corrected information as soon as practicable. Whether the
information is provided ‘as soon as practicable’ will be determined on a case-by-case basis.

It is necessary for the Secretary to have the most up-to-date information to determine whether
a particular application should be granted. The provision of information may lead the
Secretary to take certain action, such as suspension of an export permit.

Two notes will be included at the end of subclause 378(2). Note 1 will provide that a person
may commit an offence or be liable to a civil penalty if the person makes a false or misleading
statement in an application or provides false or misleading information or documents and will
refer the reader to sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368
and 369 of the Bill. The note will also clarify that a person may commit an offence or be
liable to a civil penalty if the person provides false or misleading information or documents.
The sections specified in the *Criminal Code* and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents, which is inconsistent with the requirements of the Bill and could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Note 2 will provide that clause 378 is not subject to the privilege against self-incrimination and will refer the reader to clause 426 of the Bill. Removing the privilege against self-incrimination will ensure that the Secretary will receive relevant information in relation to an application to which this Division applies and if necessary, can take immediate action. Clause 426 will set out the effect of the provision abrogating the privilege against self-incrimination. This will include immunities on the use and derivative use of self-incriminatory material. This material will only be used to ensure that goods are not exported where they do not comply with importing country requirements and requirements of the Bill, and will not result in criminal or civil proceedings against the person who provided the material.

Subclause 378(3) will provide a civil penalty may be imposed in circumstances where a person is required to give additional or corrected information to the Secretary under subclause 378(2) and they fail to comply with that requirement.

Subclause 378(3) will provide that a person will contravene subclause 378(3) if:

- the person is required to give information to the Secretary under subclause 378(2); and
- the person fails to comply with the requirement.

Subclause 378(3) will prescribe a civil penalty of 60 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 378. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 378(3) will be 300 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

This civil penalty provision is intended to provide an effective deterrent to conduct that will be inconsistent with the requirements of this clause. It will be necessary for the Secretary to have relevant and correct information to determine whether the application that has been made should be accepted or rejected. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

**Clause 379 Dealing with applications**

Clause 379 will set out the regime for dealing with applications, including time periods for dealing with the application, the consequences of not making a decision on the application, and what the Secretary may do for the purposes of making a decision on the application.

**Period within which decision must be made**

Subclause 379(1) will provide that the Secretary must make a decision in relation to an application (the *relevant application*) within the consideration period (see subclauses 379(3), 379(4), 379(5) and 379(5A)) if the application contains the information required under
subclauses 372(1) and (2) of the Bill and the application has not been withdrawn. A note will be included at the end of subclause 379(1) that will refer the reader to subclause 377(4) of the Bill. The note will provide that an application that does not meet the requirements of subclauses 377(1) or (2) of the Bill is taken not to have been made.

Subclause 379(2) will provide that if the Secretary does not make a decision within the consideration period, the Secretary is taken to have refused the application. This is to ensure that applicants receive certainty on the outcome of their application in a timely manner.

*Consideration period – general*

Subclause 379(3) will provide that the *consideration period* for the relevant application is the period *(initial consideration period)* that will be prescribed by the rules made under clause 432 of the Bill, as extended under subclauses 379(5), (6), (7) or (8). Having a prescribed consideration period will ensure that applicants receive certainty on when the outcome of their application will be known. Enabling the Secretary to prescribe in the rules the consideration period for an application of a particular kind will be necessary to accommodate the differing requirements of different commodities.

Subclause 379(4) will provide that the consideration period for the relevant application starts on the day after the day the Secretary receives the application.

Subclause 379(5) will provide that the initial consideration period for the relevant application is extended:

- for each request made under paragraph 379(9)(a), (b), (c) or (e) – by the total number of days in the period starting on the day the request was made and ending on the day the request was complied with; or
- if the request was not complied with within the period specified in the request – the last day of that period; and
- for each thing referred to in paragraph (9)(b) that is done – the number of days in the period during which the thing was done; and
- for each test or analysis of samples taken under subparagraph (9)(b)(iv) – by the number of days in the period during which the testing or analysis was carried out; and
- for each thing done under paragraph 379(9)(f) – by the total number of days in the period during which thing was done; and
- for any other reason prescribed by the rules – by the number of days in the period prescribed by the rules in relation to that reason.

*Consideration period – related applications*

Subclause 379(6) will provide that if:

- the Secretary receives an application under clause 111 to register an establishment for a kind of export operations in relation to a kind of prescribed goods; and an application under clause 150 to approve a proposed approved arrangement for the same kind of export operations in relation to the same kind of prescribed goods; and
• either:

(i) the applications are received at the same time (whether or not they are made using a single approved form); or

(ii) the applications are not received at the same time but the second application is received before the end of the consideration period for the first application;

then, if the initial consideration period for either of the applications is extended for a period under subclause 379(5), the initial consideration period for the other application is also extended for that period.

Subclause 379(7) will provide that if:

• the Secretary receives an application under clause 116 to renew the registration of an establishment for a kind of export operations in relation to a kind of prescribed goods; and an application under clause 155 to renew an approved arrangement for the same kind of export operations in relation to the same kind of prescribed goods; and

• either:

(i) the applications are received at the same time (whether or not they are made using a single approved form); or

(ii) the applications are not received at the same time but the second application is received before the end of the consideration period for the first application;

then, if the initial consideration period for either of the applications is extended for a period under subclause 379(5), the initial consideration period for the other application is also extended for that period.

Subclause 379(8) will provide that if:

• the Secretary receives an application under clause 120 to make a variation in relation to the registration of an establishment or approve an alteration of an establishment; and an application under clause 161 to approve a variation of an approved arrangement, or the conditions of an approved arrangement, covering export operations carried out at the establishment to which the application in subparagraph 379(8)(a)(i) applies; and

• either:

(i) the applications are received at the same time (whether or not they are made using a single approved form); or

(ii) the applications are not received at the same time but the second application is received before the end of the consideration period for the first application;
then, if the initial consideration period for either of the applications is extended for a period under subclause 379(5), the initial consideration period for the other application is also extended for that period.

The effect of subclauses 379(5), (6), (7) and (8) will be to provide for how consideration periods will be calculated in circumstances where the Secretary makes a written request of the applicant under subclause 379(9) (for example, a request to provide information or documents to the Secretary, or a request for consent for the Secretary to enter premises to inspect export operations carried out in relation to goods to which the application relates). The request must specify the period for complying with the request (which cannot be longer than the period prescribed by the rules). The initial consideration period will be extended in accordance with subclauses 379(5), (6), (7) or (8), depending on the circumstances.

Powers of Secretary

Subclause 379(9) will set out what the Secretary may do in relation to an application. The purpose of the powers in subclause 379(9) is to enable the Secretary to be satisfied in all the circumstances that it is appropriate to approve the application. The powers in subclause 379(9) will include, for example, requesting additional information or documents; requesting consent to enter the premises to assess the suitability of the premises and equipment and facilities, inspect, examine or evaluate export operations or other operations; take samples of goods or from equipment used in the export operations or other operations; or any other thing prescribed by the rules. Enabling the rules to prescribe any other thing that the Secretary may do for the purpose of making a decision is intended to ensure that the Secretary has the ability to obtain any other information that is relevant to the application.

While there is no express sanction for failing to comply with the Secretary’s request, ultimately the consideration period will expire and the application will be taken to have been refused.

A note will be included at the end of subclause 379(9) that will refer the reader to Division 2 of Part 6 of Chapter 11 of the Bill which will set out matters relating to taking, testing and analysing samples.

Subclause 379(10) will provide that a request from the Secretary under subclause 379(9) must be in writing, and must specify the time period in which the request must be complied with (which cannot be longer than the time period prescribed by the rules).

PART 1A—ALTERNATIVE REGULATORY ARRANGEMENTS

Division 1—Introduction

Clause 379A  Simplified outline of this Part

Clause 379A will provide a simplified outline of Part 1A of Chapter 11 of the Bill. Part 1A of Chapter 11 of the Bill will provide for matters in relation to alternative regulatory arrangements for export arrangements and prescribed goods, including a variation of an approved arrangement. An alternative regulatory arrangement could involve alternative procedures or new technology which could differ from currently accepted and approved science or practices for a kind of export operations.
The simplified outline will be included to assist the reader to understand the substantive clauses of Part 1A of Chapter 11; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which this outline relates.

**Division 2—Alternative Regulatory Arrangements**

**Clause 379B  Application to approve alternative regulatory arrangement**

Clause 379B will provide for the process for making an application for approval of an alternative regulatory arrangement. Subclause 379B(1) will provide that a person may apply to the Secretary for approval of an alternative regulatory arrangement, that is, a procedure, standard or other requirement, in relation to a kind of export operations and a kind of prescribed goods where:

- the alternative regulatory arrangement is different from a requirement of the Bill, or an industry standard or practice that applies in relation to that kind of export operations and goods (paragraph 379B(1)(a));
- carrying out that kind of export operations in relation to that kind of prescribed goods under the alternative regulatory arrangement will achieve the same purpose as the requirement or the industry standard or practice under paragraph 379B(1)(a) of the Bill and ensure the integrity of goods of that kind; and
- ensure that importing country requirements in relation to export operations of that kind and goods of that kind will be met.

A note will be included at the end of subclause 379B(1) that will refer the reader back to the definition of this Act in clause 12 of the Bill which provides that the reference to this Act includes a reference to instruments made under the Bill.

Subclause 379B(2) will prescribe the requirements for an application to which this Part applies. The application must:

- if the Secretary has approved, in writing, a manner for making an application—be made in an approved manner;
- if the Secretary has approved a form for making the application—include the information required by the form and be accompanied by any documents required by the form;
- include the information (if any) prescribed by the rules; and
- be accompanied by any documents prescribed by the rules.

Enabling rules made under clause 432 of the Bill to prescribe any information or documents that must accompany an application to approve an alternative regulatory arrangement is intended to make sure that the Secretary has access to relevant information or documents not covered by the other paragraphs in this subclause. Such information or documents may be important to the Secretary’s decision of whether to approve an alternative regulatory arrangement. The ability to prescribe these matters also reflects the likelihood that the requirements prescribed will change from time to time and will need to commence at short notice.

A note will be included at the end of subclause 379B(2) that will provide that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents.
(see sections 136.1, 137.1 and 137.2 of the Criminal Code and clauses 367, 368 and 369 of the Bill). The sections specified in the Criminal Code and the clauses in the Bill are intended to provide an effective deterrent to persons who provide false or misleading information or documents in an application to approve an alternative regulatory arrangement, which could result in the export of goods that do not comply with requirements or conditions set out in the Bill.

Subclause 379B(3) will ensure that applications that do not comply with subclause 379B(2) (for example, incomplete or abandoned applications) are taken not to have been made. This is to avoid unnecessary administration and allocation of resources to applications that do not comply with the requirements set out in the Bill. This will mean, for example, that the Secretary will not be required to make a decision on the application if it is incomplete.

**Clause 379C Secretary must decide whether to approve alternative regulatory arrangement**

Subclause 379C(1) will provide that, on receiving an application under subclause 379B(1) of the Bill to approve an alternative regulatory arrangement in relation to a kind of export operations and a kind of prescribed goods, the Secretary must decide either to approve the alternative regulatory arrangement or to refuse to approve the alternative regulatory arrangement.

The note at the end of subclause 379C(1) will refer the reader to subclause 379B(2) of the Bill, which will provide that an application that does not comply with subclause 379B(1) is taken not to have been made. This clause will make it clear that incomplete applications do not need to be dealt with in the manner provided for by subclause 379C(1) of the Bill. This will mean that, for example, the Secretary will not be required to make a decision on the application if it is incomplete.

Subclause 379C(2) will provide that the Secretary may approve the alternative regulatory arrangement in relation to the kind of export operations and the kind of prescribed goods if the Secretary is satisfied, having regard to any matter that the Secretary considers relevant, that:

- carrying out a kind of export operations in relation to the kind of prescribed goods in accordance with the regulatory arrangement will:
  - achieve the same purpose as a requirement of the Bill or an industry standard or practice in relation to export operations of that kind and that kind of goods;
  - ensure the integrity of that kind of goods; and
  - ensure that importing country requirements relating to that kind of export operations and that kind of goods will be met.
- any other requirement prescribed by the rules is met.

Enabling the rules made under clause 432 of the Bill to prescribe any additional requirements that must be met before an application for an alternative regulatory arrangement is approved, will provide the Secretary with the flexibility to determine additional requirements that may be necessary to ensure that it is appropriate in all the circumstances to approve the application. 
and that there are no reasons to refuse the application. This may be specific to a kind of prescribed goods, kind of export operations, or place of export. This also reflects the likelihood that requirements may need to change from time to time and will need to commence at short notice.

A note at the end of subclause 379C(2) will assist the reader in relation to variations of approved arrangements with a reference to these provisions in the Bill (Subdivision B of Division 1 of Part 4 of Chapter 5), as a variation may be needed to implement an alternative regulatory arrangement that has been approved under paragraph 379C(1)(a).

Notice of decision

Subclause 379C(3) will provide that the Secretary must give the applicant written notice of the decision under subclause 379C(2). If the decision is a refusal, the notice must include the reasons why the Secretary decided not to approve the application for an alternative regulatory arrangement. A decision to approve or refuse to approve the alternative regulatory arrangement will not be a reviewable decision. An alternative regulatory arrangement could enable alternative procedures or new technology to be used for export arrangements or prescribed goods and provides flexibility for future developments. However, a refusal to approve the alternative regulatory arrangement will not prevent the applicant from complying with the requirements of the Bill.

PART 2—REVIEW OF DECISIONS

Division 1—Introduction

Clause 380 Simplified outline of this Part

Clause 380 will provide a simplified outline of Part 2 of Chapter 11 of the Bill. Part 2 of Chapter 11 of the Bill will provide for matters in relation to decisions that will be reviewable internally and by the Administrative Appeals Tribunal.

The simplified outline will be included to assist the reader to understand the substantive clauses of Part 2 of Chapter 11 of the Bill; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Review of decisions

Clause 381 Reviewable decisions

The table in subclause 381(1) will set out what decisions made under the Bill will be reviewable decisions.

There will be 76 items in the table. For each item, the table will set out what the reviewable decision will be (column 1), the provision under which the reviewable decision will be made (column 2) and the relevant person for the decision (column 3). The relevant person is the person who is able to seek merits review of the decision.

For example, item 9 will relate to the decision to vary the conditions of the accreditation of a property (column 1) under paragraph 90(1)(b) of the Bill (column 2). The manager of the property is the relevant person who may apply for merits review of the decision (column 3).
The ability to seek a review of these decisions is consistent with the Government’s policy that an administrative decision that is likely to affect the interests of an individual should be reviewable on its merits unless to do so would be inappropriate, or there are factors justifying the exclusion of merits review. This may include, for example, where:

- the decision is in favour of the person affected by the decision;
- the decision is procedural as opposed to substantive;
- the decision is procedural (such as a notice of a proposed decision) and there are urgent or serious circumstances which justify reducing procedural fairness obligations;
- the decision is mandatory and the decision-maker does not have discretion whether or not to make the decision;
- the decision is made upon request of the person affected by the decision;
- the decision sets objective criteria that will apply to a specified group of people under the Bill;
- the decision is not made by the Secretary (or a delegate or subdelegate of the Secretary);
- internal review would unnecessarily add to the administrative burden in administering the Bill, or be contrary to the purpose of the provision; or
- the decision is integral to maintaining the integrity of the export control regime.

Subclause 381(2) will enable the rules made under clause 432 of the Bill to prescribe other decisions made under the Bill as reviewable decisions and to specify the relevant person for seeking review of the decision. This will be necessary to enable decisions that are made under the rules or provisions of the Bill that are not listed in the table to be reviewable. It will also be necessary to accommodate the range of decisions relating to export operations that may be made and will provide a flexible approach to what is a reviewable decision.

A note will be included at the end of subclause 381(2) that will refer the reader to the definition of *this Act* and will advise the reader that the reference to *this Act* includes a reference to instruments made under the Bill and the Regulatory Powers Act as it will apply in relation to the Bill. This will mean that the rules, which will be legislative instruments, will be covered by the reference to *this Act* in subclause 381(2) and in all other provisions of the Bill that refer to *this Act*.

**Clause 382 Notice of decision**

Subclause 382(1) will provide that after a reviewable decision has been made, the decision maker (for example, the Secretary, an authorised officer or a delegate of the Secretary) must give a written notice to the relevant person (as set out in column 3 of the table in subclause 381(1) of the Bill or in the rules made under clause 432 of the Bill). The notice must state the terms of and reasons for the decision and information about the person’s right to have the decision reviewed by the Secretary under clause 383 of the Bill. Subclause 388(1) will also provide that a failure to provide the notice required by clause 388 does not affect the validity of the decision. This is because it a procedural matter that will not affect the actual decision that has been made.

Subclause 388(2) will provide that the requirement to give a notice under clause 388 does not affect the requirement to give notice of a reviewable decision under another provision in the Bill. For example, subclause 201(4) of the Bill will provide that a notice advising of each proposed variation of an export licence must include a statement setting out the holder of the licence’s right to seek a review of the decision to make the proposed variation.
Clause 383  Internal review of reviewable decisions

Application for review

Subclause 383(1) will provide that a relevant person for a reviewable decision (as set out in clause 381 of the Bill) may apply to the Secretary for review of the decision, unless the decision was made by the Secretary personally. A note will be included at the end of subclause 383(1) that will refer the reader to clause 385 of the Bill, which will deal with the situation where the decision was made by the Secretary personally.

Subclause 383(2) will provide that an application for review under subclause 383(1) must be in writing and set out the reasons for the application. It will also provide the period within which an application must be made. The default period will be 30 days after the day the reviewable decision first came to the notice of the applicant, however the Secretary will be able to allow a longer period. A note will be included at the end of subclause 383(2) that will refer the reader to clause 384 of the Bill, which will provide that the Secretary may require further information in relation to an application.

Review of decision

Subclause 383(3) will provide that on receiving an application, the Secretary must either review the decision personally or have the decision reviewed by another person (an internal reviewer). Paragraph 383(3)(b) will set out criteria for an internal reviewer, which will be that the internal reviewer will have been delegated the Secretary’s power to review the decision, was not involved in making the decision, and will be more senior than the person who made the decision. These criteria are intended to ensure that the review is independent and objective.

Subclause 383(4) will provide that when reviewing the decision under subclause 383(3), the Secretary or the internal reviewer may:

- affirm, vary or set aside the reviewable decision; and
- if the Secretary or internal reviewer sets aside the reviewable decision—make such other decision as the Secretary or internal reviewer thinks appropriate.

This means that if the Secretary or the internal reviewer sets aside the original decision, they will be able to substitute their decision for that of the original decision maker.

A note will be included at the end of subclause 383(4) that will clarify that the rules made under clause 432 of the Bill may prescribe modifications of the subclause in its application to reviewable decisions relating to tariff rate quota entitlements and will refer the reader to clause 386 of the Bill (Review of decisions relating to tariff rate quota entitlements).

Subclause 383(5) will provide that the decision of the Secretary or the internal reviewer (the decision on review) will take effect either on the day specified in the decision on review, or, if a day is not specified, on the day the decision on review was made.

Notice of decision

Subclause 383(6) will provide that after the Secretary or the internal reviewer makes a decision under clause 383, the Secretary or the internal reviewer must give the applicant a written notice containing the terms and reasons for the decision. It must also set out
information about the applicant’s right to have the decision reviewed by the Administrative Appeals Tribunal. However, failure to provide this notice does not affect the validity of the decision.

The requirement to give a notice ensures that a person will be able to understand the reasons for the decision and will be aware of the person’s right to review. However, as decisions made under the Bill will be made to give effect to the objects of the Bill—for example, to ensure that goods that will be exported comply with government or industry standards—it will not be appropriate for such decisions to be found invalid because notice was not provided to the person whose interests are affected by the decision.

Failure to give notice

Subclause 383(7) will provide that for the purposes of clause 385 of the Bill, the Secretary will be taken to have affirmed a reviewable decision if the applicant does not receive notice of the decision on review (if any) within 90 days after the application for review was made. This will provide the applicant with certainty about the Secretary’s decision.

Clause 384 Secretary may require further information from applicants

Subclause 384(1) will provide that the Secretary may, by written notice, require a person who has made an application under clause 383 of the Bill to give the Secretary further information about the application. This additional information would be given to the internal reviewer if such a person will exercise the review function. This would enable the Secretary or internal reviewer to be able to properly consider the application for review.

Subclause 384(2) will provide that the Secretary may refuse to consider the application until the person gives the Secretary the information. This will ensure that any automatic time periods in the legislative process will not be triggered (for example, the 90 day period after which the Secretary is taken to have affirmed a decision under subclause 383(7) of the Bill) while the Secretary is waiting for the additional information.

Clause 385 Review by the Administrative Appeals Tribunal

Subclause 385 will provide that applications may be made to the Administrative Appeals Tribunal for review of a reviewable decision made by the Secretary personally, or a review of a decision by the Secretary or an internal reviewer made under clause 383 of the Bill.

Subclause 385(2) will provide that an application under subclause 385(1) may only be made by, or on behalf of, the relevant person for the reviewable decision. This provision will exclude another person whose interests are affected by the decision from seeking a review. It is appropriate to limit persons who can seek review to relevant persons, as there is a prohibitively large number of people who could potentially claim that their interests were affected by a reviewable decision. This is due to the extensive supply chain and number of people potentially involved in, or affected by, the export of a single consignment of goods; from primary producer through to purchaser. For example, a decision to refuse to revoke the registration of an establishment may affect a person who can no longer transport the goods produced by that establishment, or, in turn, purchase those goods for export. It would be burdensome to allow any member of the public who is affected by the decision (because, for example, they can no longer purchase goods) to apply for review of the decision. This burden
outweighs the need to allow any person whose interests have been affected by a decision to apply for review.

This differs from subsection 27(1) of the Administrative Appeals Tribunal Act, which provides that anyone whose interests are affected by the decision may apply to the Administrative Appeals Tribunal for review.

Subclause 385(3) will clarify that narrowing subsection 27(1) of the Administrative Appeals Tribunal Act is intended. This will be because in some cases it will only be appropriate for the relevant person to lodge an application for review. For example, a manager of an accredited property should be able to apply for review of the decision to suspend an accreditation, however it would be burdensome to allow any member of the public who is affected by the decision to also apply for a review of the decision.

A note will be included at the end of subclause 385(3) that will make it clear that the rules made under clause 432 of the Bill may prescribe modifications of subsection 27(1) of the Administrative Appeals Tribunal Act in its application in relation to reviews of decisions relating to tariff rate quota entitlements and will refer the reader to clause 386 of the Bill (Review of decisions relating to tariff rate quota entitlements). This will be necessary to ensure that any decision by the Administrative Appeals Tribunal does not result in a decision that increases the relevant tariff rate quota entitlement.

**Clause 386 Review of decisions relating to tariff rate quota entitlements**

Subclause 386(1) will provide that the rules made under clause 432 of the Bill may prescribe modifications of subclause 383(4) of the Bill in its application in relation to reviewable decisions relating to tariff rate quota entitlements. A note will be included at the end of subclause 386(1) directing the reader to Part 4 of Chapter 8 of the Bill in relation to tariff rate quota entitlements.

Subclause 386(2) will provide that if the rules prescribe modifications of subclause 383(4) in its application in relation to reviewable decisions relating to tariff rate quota entitlements, then that subclause has effect as so modified in relation to reviewable decisions of that kind.

Subclause 386(3) will provide that the rules may prescribe modifications of subsection 43(1) of the Administrative Appeals Tribunal Act in its application in relation to reviews of decisions relating to tariff rate quota entitlements. A note will be included at the end of subclause 386(3) that will provide that if the rules prescribe modifications of subsection 43(1) of the Administrative Appeals Tribunal Act, then that subsection has effect in relation to applications for review referred to in subclause 385 of the Bill subject to those modifications (see subsection 25(6) of the Administrative Appeals Tribunal Act).

Subclause 386(4) will provide that the rules may prescribe modifications for the purposes of subclauses 386(1) or 386(3) only for the purpose of ensuring that tariff rate quota amounts are not exceeded.
PART 3—CONFIDENTIALITY OF INFORMATION

Division 1—Introduction

Clause 387 Simplified outline of this Part

Clause 387 will provide a simplified outline of Part 3 of Chapter 11 of the Bill. Part 3 of Chapter 11 of the Bill will provide for matters in relation to the confidentiality of information (which will be referred to in the Bill as protected information). The Part will include matters such as when information obtained under or in accordance with the Bill may be used or disclosed; and will create offences for unauthorised use or disclosure.

The simplified outline will be included to assist the reader to understand the substantive clauses of the Part 3 of Chapter 11 of the Bill, however; it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Authorised uses and disclosures

Clause 388 Authorisation to use or disclose protected information in performing functions or exercising powers under this Act

Clause 388 will provide that a person who obtains protected information may use or disclose that information in performing functions or duties or exercising powers under the Bill.

For example, clause 388 will enable a person who receives protected information in an application to register an establishment to use that information for the purposes of assessing the application, as well as when performing other functions or exercising other powers under the Bill. For example, a person who receives protected information will be able to disclose that information to a third party authorised officer so that the third party authorised officer will be able to carry out an audit of the export operations associated with the application.

Two notes will be included at the end of clause 388. Note 1 will provide that clause 388 will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Note 2 to clause 388 will refer the reader to the definition of use in clause 12 of the Bill, which will provide that the term use, in relation to information, includes making a record of that information.

Clause 389 Authorisation to use or disclose certain protected information for secondary permissible purposes

Subclause 389(1) will provide that protected information (other than sensitive information or information that will be obtained through compliance or enforcement activities) obtained in the course of, or for the purposes of performing, a person’s functions or duties or exercising powers under the Bill, may be used or disclosed for a secondary permissible purpose.

A secondary permissible purpose will be defined in clause 12 of the Bill as a purpose of:

- achieving the objects of the Bill; or
administering or enforcing:
  o a prescribed agriculture law as that term is defined in clause 12; or
  o another Australian law to the extent that the law relates to public health, food safety, biosecurity, the export of goods from Australian territory, the health and welfare of live animals, or the health and condition of animal reproductive material.

However, the protected information may only be used or disclosed where the person considers it will be appropriate to disclose the information for that secondary permissible purpose and the disclosure is to:
  • an officer or employee of the Commonwealth or a State or Territory; or
  • an officer or employee of a Commonwealth body or a State or Territory body.

Subclause 389(1) will ensure that information can be used or disclosed for secondary permissible purposes, however it will limit who may receive the information. A note will be included at the end of subclause 389(1) that will advise the reader that subclause 389(1) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law).

Subclause 389(2) will provide that a person to whom protected information is disclosed under subclause 389(1) may use or disclose the information for the purposes for which they received the protected information.

A note will be included at the end of subclause 389(2) that will advise the reader that subclause 389(2) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Clause 389 will apply to persons who obtain protected information, or to whom protected information is disclosed, in the course of, or for the purposes of, performing functions or duties or exercising powers under the Bill. Clause 389 will not apply to a person who does not receive the protected information in these circumstances.

For example, if protected information is disclosed to a state food safety body, that body does not obtain or receive the protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under the Bill. Therefore they will not be subject to the controls on making secondary disclosures. However, a person who will have an auditing function under the Bill and who receives protected information will be subject to the controls on when a secondary disclosure is permissible.

Clause 390 Secretary may authorise use or disclosure of certain protected information for secondary permissible purposes

Subclause 390(1) will provide that the Secretary may, if the Secretary considers it appropriate to do so, authorise a person to use or disclose protected information (other than protected information covered by clause 391 of the Bill) for a secondary permissible purpose. The authorisation by the Secretary must be in writing and specify the secondary permissible purpose.
If the authorisation is for the person to disclose the information, the authorisation by the Secretary must specify who (either a person or class of persons) the information will be able to be disclosed to. Subclause 390(1) will ensure that there are appropriate controls on the disclosure of information and that the reasons for authorising the disclosure will be documented in writing.

An example of when the Secretary could authorise a person to disclose information under subclause 390(1) will be included at the end of subclause 390(1). The Secretary could authorise a person to disclose specified protected information under this subclause to:

- a third party authorised officer; or
- an accredited veterinarian; or
- a body that is authorised to perform functions or exercise powers in relation to the health and welfare of animals or the health and condition of animal reproductive material under an Australian law.

Subclause 390(2) will provide that a person who is authorised by the Secretary to use or disclose protected information may use or disclose the information in accordance with the authorisation. For example, if a departmental official is authorised to disclose protected information to a body responsible for animal welfare for the purposes of enforcing a law that relates to animal welfare, then subclause 390(2) will enable the departmental official to disclose the protected information to that body for purposes of enforcing a law that relates to animal welfare.

A note will be included at the end of subclause 390(2) that will advise the reader that subclause 390(2) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Subclause 390(3) will provide that a person who receives protected information under subclause 390(2) will be able to use or disclose the protected information for the purposes for which the information was disclosed. This will mean that, following the above example, the body responsible for animal welfare may use the protected information for the purposes of enforcing a law that relates to animal welfare.

A note will be included at the end of subclause 390(3) that will advise the reader that subclause 390(3) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Clause 391 Authorisation to use or disclose sensitive information or certain other protected information for secondary permissible purposes

Application of this section

Subclause 391(1) will be an application provision and will clarify that clause 391 will apply in relation to protected information that is sensitive information (that is, information or an opinion about an individual’s criminal record that will also be personal information) or information that is obtained under the compliance and enforcement provisions in Chapter 10 of the Bill or the Regulatory Powers Act.
A note will be included at the end of subclause 391(1) that will refer the reader to the definition of *sensitive information* in clause 12 of the Bill.

**Secretary may authorise use or disclosure of information for secondary permissible purposes**

Subclause 391(2) will enable the Secretary, if the Secretary considers it appropriate to do so, to authorise a person to use or disclose sensitive information, or information that is obtained under compliance and enforcement activities, for a secondary permissible purpose. The authorisation by the Secretary must be in writing and specify the secondary permissible purpose. If the authorisation is for the person to disclose the information, the authorisation by the Secretary must specify who (either a person or class of persons) the information will be disclosed to. This will ensure that there are appropriate controls on the disclosure of information and the reason for the disclosure will be documented in writing.

Subclause 391(3) will provide that the Secretary may only authorise a disclosure under paragraph 391(2)(b) to:

- an officer or employee of the Commonwealth or a State or Territory; or
- an officer or employee of a Commonwealth body or a State or Territory body; or
- a third party authorised officer.

The limited circumstances in which the protected information that will be covered by clause 391 may be used or disclosed reflects the sensitive nature of this information and therefore that it requires special consideration and protection.

Subclause 391(4) will provide that a person who is authorised by the Secretary under subclause 391(2) to use or disclose protected information may use or disclose the information in accordance with the authorisation. For example, if a departmental official is authorised to disclose protected information to a biosecurity officer for the purposes of enforcing the Biosecurity Act, the departmental official may disclose the protected information to the biosecurity officer for the purposes of enforcing the Biosecurity Act.

A note will be included at the end of subclause 391(4) that will advise the reader that subclause 391(4) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Subclause 391(5) will provide that a person who receives protected information under subclause 391(4) may be able to use or disclose the protected information for the purposes that the person was given the protected information. This means that, following the above example, the biosecurity officer may use the protected information for investigating a breach of the Biosecurity Act.

A note will be included at the end of subclause 391(5) that will advise the reader that subclause 391(5) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.
Clause 392  Authorisation to use or disclose protected information for purposes of proceedings

Clause 392 will provide that a person may disclose protected information to a court, tribunal or coronial inquiry, or when required to do so by an order of a court, tribunal or coroner, for the purposes of proceedings before that court, or tribunal or for the purposes of a coronial inquiry.

Two notes will be included at the end of subclause 392(1). Note 1 will provide that clause 392 will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Note 2 will provide that the National Security Information (Criminal and Civil Proceedings) Act 2004 may apply to proceedings under this Division. The Bill contains offences for disclosing information of national security significance.

Clause 393  Authorisation to use or disclose protected information for purposes of enforcement-related activity

Clause 393 will provide a specific ground for a person to use or disclose protected information for the purposes of enforcement-related activities. Subclause 393(1) will provide that if the person reasonably believes that the use or disclosure will be reasonably necessary for, or directly related to, one or more enforcement-related activities being conducted by, or on behalf of, that enforcement body, then they will be authorised to use or disclose that information to that enforcement body.

For example, a person who receives protected information may disclose the information to the Australian Federal Police if the person reasonably believes that it is reasonably necessary to do so for an investigation being undertaken by the Australian Federal Police. The requirement for the person to have ‘reasonable belief’ that the use or disclosure is reasonably necessary for, or directly related to, one or more enforcement-related activities, will be an appropriate threshold test to ensure that information is protected while at the same time accessible for enforcement-related activities. A reasonable belief will require both a subjective and an objective element.

A note will be included at the end of subclause 393(1) that will advise the reader that subclause 393(1) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Subclause 393(2) will provide that an enforcement body that receives protected information under subclause 393(1) may use or disclose the protected information for the purposes of conducting one or more enforcement-related activities. Therefore, in the example above, the Australian Federal Police will be able to use the information received for the purposes of investigating the offence.

A note will be included at the end of subclause 393(2) that will advise the reader that subclause 393(2) will constitute an authorisation for the purposes of the Privacy Act and other
laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

**Clause 394 Authorisation to use or disclose protected information if required by another Australian law**

Clause 394 will provide that a person who obtains protected information may use or disclose the protected information when required to do so under an Australian law other than the Bill. For example, a person who obtains protected information under the Bill may be required to disclose the information under the Biosecurity Act.

A note will be included at the end of clause 394 that will advise the reader that clause 394 will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

**Clause 395 Authorisation to disclose protected information to person to whom information relates, or to use or disclose protected information with consent**

Subclause 395(1) will enable a person who obtains protected information to disclose protected information to the person to whom the information relates. This provision will remove any doubt that such a disclosure is authorised and is not prevented by the disclosure regime that will be set out in the Bill.

A note will be included at the end of subclause 395(1) that will advise the reader that subclause 395(1) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Subclause 395(2) will enable a person (the **first person**) who obtained the protected information to use or disclose the information if the person to whom the information relates expressly consents to the first person using or disclosing the information. This provision will remove any doubt that such a disclosure is authorised and is not prevented by the disclosure regime that will be set out in the Bill.

A note will be included at the end of subclause 395(2) that will advise the reader that subclause 395(2) will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

**Clause 396 Authorisation to disclose protected information to person who provided information**

Clause 396 will enable a person to disclose protected information to the person who provided the information. This provision will remove any doubt that such a disclosure is authorised and is not prevented by the disclosure regime that will be set out in the Bill.
A note will be included at the end of clause 396 that will advise the reader that clause 396 will constitute an authorisation for the purposes of the Privacy Act and other laws (including the common law) and therefore will provide an exception to the Australian Privacy Principles. It will also avoid the person who makes the disclosure from committing an offence under clause 397 of the Bill.

Division 3—Offences

Clause 397    Unauthorised use or disclosure of protected information

Fault-based offence

Subclause 397 will provide that a penalty may be imposed in circumstances where a person obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under the Bill, the person uses or discloses the information, and the use is not authorised under the Bill.

Subclause 397(1) will provide that a person commits a fault-based offence if:

- the person obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under the Bill; and
- the person uses or discloses the information; and
- the use or disclosure is not authorised by a provision in Division 2 of Part 3 of Chapter 11 of the Bill.

The penalty for contravening subclause 397(1) will be imprisonment for two years or a fine of 120 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 397(1) will be 600 penalty units. The level of the penalty is consistent with other similar Commonwealth offences. The penalty is intended to provide an effective deterrent to conduct that may result in the disclosure of protected information in circumstances that are not reasonable, necessary or proportionate and reflects the serious consequences for unauthorised use or disclosure of protected information.

Clause 397 is intended to provide an effective deterrent to conduct that will be inconsistent with the requirements of not disclosing protected information except when authorised to do so. Conduct that contravenes this requirement may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of persons involved in the export of goods from Australia.

Exception for use or disclosure in good faith

Subclause 397(2) will create a defence to the offence in subclause 397(1), if the use or disclosure of protected information was done in good faith and in purported compliance with Division 2 of Part 3 of Chapter 11 of the Bill. A note will be included at the end of subclause 397(2) that will refer the reader to section 13.3(3) of the Criminal Code, and will provide that the defendant will bear the evidential burden in relation to this defence.
PART 4—COST RECOVERY

Division 1—Introduction

Clause 398 Simplified outline of this Part

Clause 398 will provide a simplified outline of Part 4 of Chapter 11 of the Bill. Part 4 of Chapter 11 of the Bill will provide for matters in relation to charging fees for activities carried out by, or on behalf of, the Commonwealth. The Part will also provide that a fee must not be such as to amount to taxation, that a late fee may also be payable, that an amount that is due and payable may be recovered as a debt due to the Commonwealth. The Part will also provide that the Secretary may remit or refund a cost-recovery change in certain circumstances, and that the Secretary may issue certain directions.

The simplified outline will be included to assist the reader to understand the substantive clauses of the Part 4 of Chapter 11 of the Bill, however; it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

Division 2—Fees

Clause 399 Fees and other rules for fee-bearing activities

Clause 399 will enable fees to be charged for services that are provided and will be in line with the Australian Government Cost Recovery Guidelines. Subclause 399(1) will enable the Secretary to make rules under clause 432 of the Bill to prescribe fees that may be charged when activities are carried out by (or on behalf of) the Commonwealth in relation to functions and powers under the Bill (fee-bearing activities).

A note will be included at the end of subclause 399(1) that will clarify that fees may be charged by certain issuing bodies (see clause 64 of the Bill), approved auditors (see clause 275 of the Bill), approved assessors (see clause 283 of the Bill) as well as State or Territory authorised officers and third party authorised officers (see clause 303 of the Bill) in relation to activities these persons are authorised under the Bill to carry out.

Subclause 399(2) will provide an example of what the rules made under clause 432 of the Bill for the purposes of subclause 399(1) may cover. The rules may, for example, prescribe fees to be charged for the cost of arranging and paying for someone other than the Commonwealth to carry out a fee-bearing activity.

Subclause 399(3) will provide that a fee prescribed under subclause 399(1) must not be such as to amount to taxation, which addresses the constitutional limitation on the imposition of a tax.

Subclause 399(4) will provide that the rules made for the purposes of subclause 399(1) may also make provision for and in relation to deposits to be paid in relation to fee-bearing activities, or fees to be paid in relation to specified applications. For example, the rules may prescribe what fee is to be paid by a person who applies to be a third party authorised officer.

Enabling the Secretary to prescribe fees and other matters in the rules made under clause 432 of the Bill that relate to cost-recovery will be necessary for the purpose of recovering the costs.
associated with activities carried out in the performance of functions or exercise of powers that will be provided for in the Bill. Prescribing these matters in the rules reflects the likelihood that the types of activities provided and the amounts payable will change from time to time and may need to commence at short notice.

Division 3—Payment of cost-recovery charges

Clause 400 Paying cost-recovery charges

Paragraph 400(a) will enable the rules made under clause 432 of the Bill to prescribe when a specified cost-recovery charge will be due and payable. A cost-recovery charge will be defined in clause 12 of the Bill and to mean a fee prescribed under subclause 399(1) of the Bill for a fee bearing activity, a charge imposed by the *Export Charges (Imposition—Customs) Act 2015*, the *Export Charges (Imposition—Excise) Act 2015*, or the *Export Charges (Imposition—General) Act 2015*, or a late payment fee relating to those fees and charges.

Paragraph 400(b) will enable the rules made under clause 432 of the Bill for the purposes of clause 400 to prescribe when a person’s agent is liable to pay the cost-recovery charge on the person’s behalf and when the agent can recover that amount from the person on whose behalf the cost-recovery charge was paid.

Enabling the Secretary to prescribe these matters in the rules reflects the likelihood that the requirements will change from time to time in line with changes to operational requirements and to support efficient administration of the cost-recovery arrangements provided for under the Bill.

Clause 401 Person liable to pay cost-recovery charges

Clause 401 will enable the rules made under clause 432 of the Bill to prescribe one or more persons who are liable to pay cost-recovery charges. Enabling the Secretary to prescribe who is liable to pay cost-recovery charges in the rules ensures the appropriate person can be made liable for a such charges, recognising that cost-recovery charges and associated activities change from time to time in line with the Australian Government Cost Recovery Guidelines and operational requirements.

Clause 402 Notional payments by the Commonwealth

Subclause 402(1) will provide that the Commonwealth (or parts of the Commonwealth) will be notionally liable to pay cost-recovery charges when fee-bearing activities are carried out by or on behalf of the Commonwealth in relation to the performance of functions or the exercise of powers under the Bill. It will enable the Minister administering the PGPA Act to give written directions to give effect to this notional liability, including for the notional transfer of money between or within Commonwealth financial accounts.

A note will be included at the end of subclause 402(1) that will refer the reader to section 76 of the PGPA Act, which addresses notional payments and receipts.

Subclause 402(2) will provide that a direction that may be given by the Minister who administers the PGPA Act under subclause 402(1) will not be a legislative instrument for the purposes of the definition of legislative instrument provided for by section 8 of the
Legislation Act. Subclause 402(2) will make a statement as to the law (that is, that directions are not legislative instruments) and will not create an actual exemption to that Act.

**Division 4—Unpaid cost-recovery charges**

**Clause 403 Late payment fee**

Subclause 403(1) will provide that if the rules made under clause 432 of the Bill for the purposes of paragraph 400(a) specify the time when a cost-recovery charge is due and payable (the *basic charge*), the rules made under clause 432 of the Bill for the purposes of subclause 403(1) may also specify a fee (a *late payment fee*) that is due and payable if the basic charge is not paid at or before the time it is due.

Subclause 403(2) will provide that, without limiting subclause 403(1), a late payment fee may relate to each day, or part day, that the basic charge remains unpaid. The late payment fee may be used as a compliance tool to encourage on time payment of cost-recovery charges and ensure that the Commonwealth can recover costs for services already provided.

Subclause 403(3) will enable the rules to prescribe one or more persons who are liable to pay a late payment fee in relation to a cost-recovery charge referred to in paragraphs (a) or (b) of the definition of *cost-recovery charge* in clause 12 of the Bill.

Clause 12 of the Bill defines the term cost-recovery charge to include a late payment fee. A cost-recovery charge is also included in the definition of a *relevant Commonwealth liability* in clause 12 of the Bill. This means that the Secretary may suspend or revoke a permission, such as the registration of an establishment, if a cost-recovery charge remains unpaid (including the failure to pay a late payment fee) (see clauses 127 and 138 of the Bill). In addition, under clause 406 of the Bill, the Secretary will be able to refuse to carry out, or direct a person not to carry out, specified activities until the cost-recovery charge has been paid.

Enabling the rules to prescribe late payment fees that may be due and payable, and who is liable to pay the late payment fee, will provide the Secretary with the flexibility to specify appropriate late payment fees.

**Clause 404 Recovery of cost-recovery charges**

Clause 404 will provide that any cost-recovery charge that will be due and payable may be recovered as a debt due to the Commonwealth in a relevant court. Clause 12 of the Bill will define the term relevant court to mean the Federal Court, the Federal Circuit Court or a court of a State or Territory that has jurisdiction in relation to matters arising under the Bill. The recovery of cost-recovery charges through a relevant court will be used as a means to ensure that the Commonwealth can recover costs for services provided.

**Division 5—Miscellaneous**

**Clause 405 Secretary may remit or refund cost-recovery charges**

Subclause 405(1) will enable the Secretary to remit or refund the whole or a part of a cost-recovery charge that is payable or that has been paid, if the Secretary is satisfied that the circumstances justify such a course of action. Subclause 405(2) will provide that the
remission or the refund will be at the Secretary’s discretion or on written application by a person.

**Clause 406 Secretary may direct that activities not be carried out**

Clause 406 will enable the Secretary to refuse to carry out, or to direct a person not to carry out, specified activities (for example, an audit or assessment) until a cost-recovery charge which is due and payable has been paid. This provision will prevent a debtor who has unpaid cost-recovery charges from incurring additional liabilities. It will also reduce the likelihood that the Commonwealth will expend further resources in relation to activities for that person where there is an outstanding debt and will encourage those persons to pay a cost-recovery charge for which they are liable.

**PART 5—RECORDS**

**Division 1—Introduction**

**Clause 407 Simplified outline of this Part**

Clause 407 will provide a simplified outline of Part 5 of Chapter 11 of the Bill. Part 5 of Chapter 11 of the Bill will provide for matters in relation to the requirements for certain persons to retain records and will create an offence if a person fails to retain records when required to do so. The simplified outline will be included to assist the reader to understand the substantive clauses of the Part; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.

**Division 2—Records**

**Clause 408 Requirements to retain records**

Subclause 408(1) will enable the rules made under clause 432 of the Bill for the purposes of subclause 408(1) to set out matters relating to the requirements for retaining records. The retention of records is necessary for a range of reasons including, for example, the monitoring of compliance with importing country requirements and government or industry standards. It may also be relevant, for example, in relation to the traceability of goods should there be a need to recall those goods. Retaining records is an essential part of accountability and enables proper oversight by the Secretary of the export supply chain.
Subclause 408(1) will provide that the rules may make provision requiring the following persons to retain records:

- a person who carries out, or has carried out, export operations in relation to prescribed goods;
- the manager of an accredited property;
- a person who manages or controls, or has managed or controlled, export operations at a registered establishment;
- a person who manages or controls, or has managed or controlled, export operations in accordance with an approved arrangement;
- a person who participates, or has participated, in the management or control of the export business of a person who holds an export licence (as provided by clause 220);
- a person who manages or controls, or has managed or controlled, export operations in accordance with an approved arrangement;
- a person who participates, or has participated, in the management or control of the export business of a person who holds an export licence (as provided by clause 220);
- a person who carries out, or has carried out, export operations in relation to non-prescribed goods in relation to which:
  - an application for a government certificate or a tariff rate quota certificate has been made; or
  - a government certificate or a tariff rate quota certificate has been issued;
- a person who performs or has performed functions, or who exercises or has exercised powers, under the Bill.

The requirement in clause 408 will be to ‘retain’ records. Other provisions in the Bill will deal with the requirement to make records. A note will be included at the end of subclause 408(1) that will provide examples of when a person may be required to make a record under a provision of the Bill. For example, the occupier of a registered establishment may be required to make a record about a matter in accordance with a condition of the registration of the establishment imposed under subclause 113(1) of the Bill. Similarly, the holder of an approved arrangement will be required to make a record of certain variations of the arrangement under subclause 159(2) of the Bill.

Subclause 408(2) will provide examples of what the rules made under clause 432 of the Bill for the purposes of subclause 408(1) may contain. The rules may address the following matters in relation to retaining records:

- the kind of records that must be retained;
- the form in which records must be retained;
- the period for which records must be retained;
- the secure retention of records.

Enabling the rules to prescribe the circumstances in which records must be retained will provide the Secretary with the flexibility to adjust to changing business and export requirements in relation to the retention of records. It will also enable flexibility to recognise changes in technology that will impact on the manner in which records are retained.

**Strict liability offence**

Subclause 408(3) will provide that a person will contravene subclause 408(3) if:

- the person is required to retain a record in accordance with rules made under clause 432 of the Bill for the purposes of subclause 408(1); and
- the person fails to comply with the requirement.
Subclause 408(3) will be a strict liability offence with a penalty of 20 penalty units or 100 penalty units for a body corporate (as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply). This means that the prosecution will only be required to prove the physical elements of the offence beyond reasonable doubt, and will not be required to prove fault elements, in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code).

The use of strict liability in this offence is appropriate because the offence will apply only to persons who choose to be involved in the regulatory scheme that the Bill will set up, and those people can reasonably be expected to be aware of their duties and obligations under the law. Further, the persons to whom this offence will apply should be on notice to guard against any contravention of the provision, and there is a strong public interest in ensuring that the provision is complied with. The offence is also consistent with the Guide in relation to strict liability offences.

The level of the penalty prescribed by subclause 408(3) is within the limits considered appropriate by the Guide policy in relation to strict liability offences. The penalty and strict liability will be necessary to ensure the integrity of the regulatory system relating to record keeping.

PART 6—MISCELLANEOUS

Division 1—Introduction

Clause 409  Simplified outline of this Part

Clause 409 will provide a simplified outline of Part 6 of Chapter 11 of the Bill. Part 6 of Chapter 11 of the Bill will provide for a range of matters in relation to exports that are not provided for elsewhere in the Bill. These matters will include:

- taking, testing and analysis of samples and the role of analysts;
- forfeiture of goods;
- compensation for damaged and destroyed goods;
- treatment of partnerships, unincorporated associations and trusts;
- reports about export of livestock;
- compensation for acquisition of property;
- circumstances in which the privilege against self-incrimination does not apply;
- penalties for hindering compliance with the Bill or influencing a person performing functions or duties or exercising powers under the Bill;
- arrangements with States and Territories to assist in carrying out the Bill; and
- protection from civil proceedings for certain persons who perform functions or duties, or exercise powers, under the Bill.

The simplified outline will be included to assist the reader to understand the substantive clauses of the Part; however, it is not intended to be comprehensive. It is intended that the reader will rely on the substantive clauses of the Bill to which the outline relates.
Division 2—Taking, testing and analysing samples

Clause 410  Methods for taking, testing and analysing certain samples

Subclause 410(1) will provide that clause 410 will apply in relation to a sample of goods or any other thing that is to be taken, tested or analysed under the Bill. For example, in conducting an audit of export operations under Part 1 of Chapter 9 of the Bill, an assessment of goods under Part 2 of Chapter 9 of the Bill, or when dealing with an application under Part 1 of Chapter 11 of the Bill.

However, clause 410 will not apply when the samples are taken, tested or analysed under Chapter 10 of the Bill (compliance and enforcement) or the Regulatory Powers Act. The methods that may be used in relation to sampling under those provisions need not be limited to the methods set out in subclause 410(2). They may include other methods such as using testing methods suitable to detect, count and identify microorganisms in a food product.

Subclause 410(2) will provide that the sample must be taken, tested or analysed in accordance with:

- if a method is prescribed by the rules for that kind of sample—the prescribed method; or
- in any other case:
  - an applicable method specified in the Australia New Zealand Food Standards Code; or
  - an applicable method specified in an Australian Standard published by, or on behalf of, Standards Australia; or
  - any other appropriate, validated and science-based method approved by the Secretary.

Enabling the rules made under clause 432 of the Bill to prescribe the methods for taking, testing and analysing samples will provide the Secretary with the flexibility to specify methods that may be relevant to the particular sample to be tested and will reflect changes in technology and advances in science. In the absence of rules, the sample may be tested in accordance with one of the methods set out in the documents or procedures that will be listed in paragraph 410(2)(b).

Clause 411  Storage of samples

Clause 411 will provide that the rules made under clause 432 of the Bill may make provision for and in relation to the storage of samples that may be tested or analysed under the Bill. For example, the rules could provide that samples must be stored at a specific temperature or at a specific location.

Enabling the rules to prescribe the circumstances in which samples are stored will provide the Secretary with the flexibility to specify storage requirements relevant to the particular sample to be tested.

Clause 412  Test or analysis may result in destruction or reduction in value of sample

Clause 412 will provide that a person who is required or permitted to test or analyse a sample of goods or any other thing under the Bill may carry out tests or analysis that results in the
destruction, or a reduction in the value, of the sample or a package or goods associated with the sample. This clause will be necessary as testing or taking a sample may require, for example, cutting open a product’s packaging and therefore making it unsuitable for sale.

**Clause 413  Appointment of analyst**

Clause 413 will enable the Secretary to appoint a person to be an analyst for the purposes of the Bill. Subclause 413(2) will provide that the Secretary must not appoint a person to be an analyst unless that person satisfies, or will satisfy, the training and qualification requirements determined under subclause 413(3).

Subclause 413(3) will require the Secretary to determine, in writing, the training and qualification requirements for analysts. This will ensure that all analysts have the necessary skills, qualifications and experience to take, test and analyse a sample. The effectiveness of, and confidence in, the export control regime depends on the capacity and capability of persons performing functions and exercising powers under the Act.

Subclause 413(4) will provide that a determination as to the training and qualification requirements for analysts will not be a legislative instrument for the purposes of the definition of legislative instrument in section 8 of the Legislation Act. Subclause 413(4) will make a statement as to the law (that is, that the determination is not a legislative instrument) and will not create an actual exemption to that Act.

**Clause 414  Analyst may give certificate**

Subclause 414(1) will provide that if a person is alleged to have contravened the Bill in relation to goods or any other thing (for example, failing to comply with a condition in relation to the integrity of the goods), an analyst appointed under clause 413 of the Bill may give a written certificate stating one or more of the following matters:

- when and from whom the goods or other thing was received;
- what (if any) labels or other means of identifying the goods or other thing accompanied the goods or other thing when it was received;
- what covering the goods or other thing was in when it was received;
- a description, and the weight, of the goods or other thing received;
- when the goods or other thing, or a portion or sample of the goods or other thing, was tested or analysed;
- a description of the method of testing or analysis;
- the results of the testing or analysis;
- how the goods or other thing was dealt with after handling by the analyst, including details of the quantity retained, the name of any person to whom any retained quantity was given, and measures taken to secure any retained quantity.

A certificate under clause 414 will be in a report format, prepared by an expert analyst on a testing or analysis procedure and as a result contains a record of formal and technical matters. The intention of the clause is to provide a mechanism for an analyst to make a formal report on tests or analysis and to have it admitted in evidence. The certificate will include formal matters such as information about the condition of the goods, the time of testing and the disposition of any remainder. It is appropriate that these matters are dealt with in the certificate as they are generally non-controversial.
A note will be included at the end of subclause 414(1) that will refer the reader to clause 415 of the Bill and will clarify that, in certain circumstances, the certificate may be admitted as evidence in proceedings related to the contravention.

Subclause 414(2) will provide that a certificate under subclause 414(1) must be in a form approved by the Secretary. Allowing the Secretary to approve the form for the certificate will ensure that all relevant information is included in the certificate.

**Clause 415 Admission of analyst’s certificate in proceedings**

Subclause 415(1) will provide that, if the procedure set out in subclause 415(2) is followed, a certificate given under clause 414 of the Bill will be admissible, in any proceedings in relation to a contravention of the Bill, as prima facie evidence of the matters stated in the certificate and the correctness of the result of the analysis to which the certificate relates.

This means that the information contained in the certificate will be able to be used as evidence against the defendant without the requirement to prove each piece of information contained in the certificate, if the procedure set out in subclause 415(2) is followed.

Clause 415 provides that a certificate given under clause 414 is *prima facie* evidence of the matters in the certificate and the correctness of the results of the analysis, it also provides for the opinion of the analyst on technical matters relating to the results of the testing or analysis to be tested through cross examination and rebutted by the defendant.

**Procedure to be followed before admitting certificate**

Subclause 415(2) will provide that, at least 14 days before a certificate given under clause 414 is admitted as evidence in the proceedings, the person who is alleged to have contravened the Bill (the *defendant*), or a legal practitioner who is appearing for the defendant in the proceedings, must be given a copy of the certificate, and notice of the intention to produce the certificate as evidence in the proceedings.

If the defendant or a legal practitioner who is appearing for the defendant is not provided the certificate as required by subclause 415(2) then the matters contained in the certificate may not be treated as prima facie evidence and the analyst may need to give direct evidence of the matters that would otherwise have been covered in the certificate.

**Analyst may be required to attend for cross-examination**

Subclause 415(3) will provide that the defendant may (subject to subclause 415(4)) require the analyst who gave the certificate to be called as a witness for the person who instituted the proceedings, and be cross-examined (as if the analyst had given evidence of the matters stated in the certificate). This will provide an opportunity for the defendant to challenge any matter in the certificate.

**Requirements for cross-examining analyst**

Subclause 415(4) will provide that the analyst may be required to be called as a witness under subclause 415(3) only if the person who instituted the proceedings has been given at least four days’ notice of the defendant’s intention to require the analyst to be called, or the court, by order, allows the defendant to require the analyst to be called.
Proof of certificate

Subclause 415(5) will provide that, for the purposes of the Bill, a document purporting to be a certificate given under clause 414 of the Bill is taken to be a certificate that has been given in accordance with that clause unless the contrary is established. This clarifies that the certificate will be taken to have been given in accordance with clause 414 of the Bill unless the contrary is established and will avoid the need to directly prove that this is the case.

Division 3—Forfeiture of goods

Clause 416 Forfeiture of goods

Subclause 416(1) will provide that the court may order the forfeiture of goods to the Commonwealth if a person is convicted of an offence against the Bill or is found to have contravened a civil penalty provision in the Bill in relation to those goods.

Subclause 416(2) will provide that the forfeiture of goods under subclause 416(1) includes the forfeiture of any coverings in which the goods are contained. Subclause 416(3) will enable the Secretary to decide if forfeited goods will be sold, destroyed or otherwise disposed of. This will allow the Secretary to determine how best to dispose of goods and the associated coverings.

Subclause 416(4) will provide that any costs reasonably incurred by the Commonwealth in storing or disposing of goods forfeited under an order made under subclause 416 may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth from the person against whom the order is made. Therefore, if the Commonwealth incurs any costs in storing, destroying or otherwise disposing of goods that have been forfeited to the Commonwealth, those costs may be recovered. This will mean that the Commonwealth will not incur costs or, in effect, be penalised, if the Commonwealth takes action against someone who has contravened the Bill and this results in the Commonwealth incurring costs.

Perishable goods that are seized without a conviction (under Chapter 10 of the Bill or the Regulatory Powers Act) may also be destroyed in certain circumstances (see clause 418 of the Bill).

Division 4—Damaged and destroyed goods etc.

Clause 417 Person complying with direction or request must not damage or destroy goods

Subclause 417(1) will provide that clause 417 applies to a person if:

- the Secretary or an authorised officer directs or requests the person to do a thing in relation to goods for the purposes of the Bill; and
- the person is not the owner of the goods or a person (other than an authorised officer) who is in possession or control of the goods.

This will mean that the owner of the goods or a person who is not an authorised officer who has possession or control of the goods will not be liable to a civil penalty if they cause damage to the goods or the goods are destroyed in purported compliance with a direction by the Secretary or an authorised officer.
Subclause 417(2) will provide that a person will be liable to a civil penalty of 120 penalty units if:

- in complying with the direction or request, the person engages in conduct that causes the goods to be damaged or destroyed; and
- either the person did not act in good faith in engaging in that conduct, or the damage or destruction was not a reasonable or necessary result of complying with the direction or request.

The penalty of 120 penalty units will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of clause 417. The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of clause 417 will be 600 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The penalty is intended to provide an effective deterrent to conduct that would cause damage to the goods or destroy the goods when such damage is not reasonable. It will protect the owner of the goods from persons who do not act in good faith and who engage in conduct that would result in the goods losing their value. The civil penalty is necessary to ensure that persons perform functions professionally and limit damage to goods as much as possible.

Clause 418 Goods seized in certain circumstances may be destroyed

Clause 418 will provide that if an authorised officer, or a person assisting an authorised officer, seizes perishable goods under Chapter 10 of the Bill (compliance and enforcement) or the Regulatory Powers Act and the goods are not able to be stored in a way that preserves them, the Secretary may cause the goods to be destroyed or otherwise disposed of.

Clause 419 Compensation for damaged or destroyed goods

Subclause 419(1) will enable the Secretary, if the Secretary considers that it is appropriate to do so, to approve the payment of a reasonable amount of compensation in respect of goods that are damaged by a person in the course of performing functions or duties, or exercising powers, under the Bill, or in respect of goods that are destroyed under the Bill.

This clause is intended to allow compensation where, for example, an authorised officer accidentally damages the goods during an audit of the premises. The purpose is to safeguard owners of the goods against financial loss if the goods are damaged or destroyed under the Bill.

Three notes will be included at the end of subclause 419(1). Note 1 will refer the reader to subclause 420(3) of the Bill, which will provide that compensation will not be payable unless a claim is made by or on behalf of the owner of the goods. Note 2 will refer the reader to subclause 420(5) of the Bill, which will provide the amount of compensation will be the amount prescribed by, or determined in accordance with, the rules made under clause 432 of the Bill. Note 3 will provide that, if the Secretary does not approve the payment of a reasonable amount of compensation under this clause, the owner of the goods may be entitled to compensation under clause 425 of the Bill (compensation for acquisition of property).
**Exceptions**

Subclause 419(2) will set out exceptions the circumstances in which compensation must not be paid. The Secretary must not approve the payment of compensation under subclause 419(1) in respect of goods that are damaged:

- as a result of samples of the goods being taken during an audit conducted in relation to the goods under Part 1 of Chapter 9 of the Bill, during an assessment of the goods carried out under Part 2 of Chapter 9 of the Bill, or as permitted by subclause 327(2) (monitoring powers that relate to taking, testing and analysing samples) or subclause 330(2) (investigation powers that relate to taking, testing and analysing samples) of the Bill; or
- in any other circumstances prescribed by the rules.

This means that, where the Bill authorises samples to be taken, tested and analysed, the Secretary must not approve compensation if the goods are damaged or destroyed. This also relates to clause 412 of the Bill, which will provide that testing or analysing a sample under the Bill may result in the destruction or reduction in value of the sample. This will be necessary as testing or taking a sample may require, for example, cutting open a product’s packaging and therefore making it unsuitable for sale.

Enabling the rules made under clause 432 of the Bill to prescribe the other circumstances in which the payment of compensation must not be approved by the Secretary reflects the likelihood that there may be circumstances other than those set out in paragraph 419(1)(a) in which goods are damaged or destroyed in the course of performing functions or exercising functions under the Bill, but for which it is not appropriate that the Secretary approve compensation.

**Clause 420 Claims for, and amount of, compensation**

**Application**

Subclause 420(1) will provide that clause 420 applies in relation to goods (compensable goods) in respect of which the Secretary may approve a payment of compensation under subclause 419(1) of the Bill.

**Compensation must be paid to owner**

Subclause 420(2) will set out to whom the compensation must be paid. This subclause will provide that compensation approved under subclause 419(1) must be:

- paid to the owner (if there is only one owner of the compensable goods); or
- divided among the owners as prescribed by the rules made under clause 432 of the Bill (if there are 2 or more owners of the compensable goods).

A note will be included at the end of subclause 420(2) that will refer the reader to subclause 420(6), which will provide the definition of owner for the purposes of clause 420.

Enabling the rules made under clause 432 of the Bill to prescribe how compensation will be divided if there are two or more owners of the goods will provide the Secretary with the discretion to specify how compensation will be divided in circumstances where there is more than one owner.
Requirements relating to claim for compensation

Subclause 420(3) will provide that an owner of goods is not entitled to compensation under subclause 419(1) of the Bill unless a claim for compensation is made by or on behalf of the owner within 12 months after the goods were damaged or destroyed.

Subclause 420(4) will provide that a claim for compensation under subclause 420(3) must be in a form approved by the Secretary (if the Secretary has approved a form), and be accompanied by the documents (if any) prescribed by the rules made under clause 432 of the Bill.

Enabling the Secretary to approve a form for seeking compensation will ensure that the Secretary will receive all relevant information before making a decision. Enabling the rules to prescribe the documents that are required to accompany a claim for compensation will ensure that the Secretary will have access to all relevant information and documents when considering an application for compensation.

Amount of compensation

Subclause 420(5) will provide that the amount of compensation payable under subclause 419(1) of the Bill will be a reasonable amount prescribed by, or determined in accordance with, the rules made under clause 432 of the Bill. What will be a reasonable amount will be determined on a case-by-case basis.

Enabling the rules to prescribe or determine the amount of compensation provides the Secretary with the discretion to specify an amount or how to determine an amount of compensation payable. This is also necessary to accommodate the range of situations where compensation may be sought, and reflects the likelihood that the appropriate amount of compensation payable will change from time to time and will need to commence at short notice.

Definition of owner

Subclause 420(6) will prescribe who the owner, in relation to compensable goods, is. This definition will remove doubt as to who the owner will be for the purpose of the payment of compensation. The owner will be a person who had an interest in the goods at the time they were damaged or destroyed, but does not include the following persons, unless the person was in possession or control of the goods at that time:

- a person who had such an interest by reason only that the person was entitled to the benefit of a mortgage or other charge, or a lien, in respect of the goods, other than a PPSA security interest;
- a person who held a PPSA security interest in the goods.

Division 5—Partnerships, unincorporated associations and trusts

Clause 421 Treatment of partnerships

Clause 421 will set out how partnerships (such as where the manager of an accredited property is a partnership) will be treated under the Bill. Clause 421 reflects the reality that many businesses use partnerships, but that the usual treatment of persons with respect to
liability does not apply to partnerships. This is because a partnership, unlike a corporation, is not a separate legal entity from its partners.

Subclause 421(1) will provide that the Bill applies to a partnership as if it were a person subject to the changes set out in clause 421. Therefore, where the Bill refers to ‘a person’, this will include a partnership, subject to the remaining provisions in clause 421.

Subclause 421(2) will provide that an obligation that would be imposed on the partnership by the Bill is imposed on each partner, but may be discharged by any of the partners. For example, where a provision makes a person liable to pay a fee, this makes the partnership liable to pay the fee, but any member of the partnership may pay the fee to discharge the liability for the partnership as a whole.

Subclause 421(3) will provide that, if an offence against the Bill would otherwise have been committed by the partnership, the offence will be taken to have been committed by each partner in the partnership. That is, each partner in the partnership, who at the time the offence was committed:

- did the relevant act or made the relevant omission; or
- aided, abetted, counselled or procured the relevant act or omission; or
- was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Subclause 421(4) will provide that if a partnership contravenes a civil penalty provision under the Bill, the contraventions will be taken to have been committed by each partner. That is, each partner will be liable to a civil penalty as if, at the time of the contravention, the partner:

- did the relevant act or made the relevant omission; or
- aided, abetted, counselled or procured the relevant act or omission; or
- was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Subclause 421(5) will clarify that a change in the composition of a partnership will not affect the continuity of the partnership. Therefore, a partnership may continue to be liable in accordance with clause 421 even if the members of the partnership have changed.

Clause 422 Treatment of unincorporated associations

Clause 422 will set out how an unincorporated association (such as where the occupier of a registered establishment is an unincorporated association) will be treated under the Bill. Clause 422 reflects the reality that many businesses use unincorporated associations but the usual treatment of persons with respect to liability does not apply to unincorporated associations. This is because an unincorporated association, unlike a corporation, is not a separate legal entity from its members.

Subclause 422(1) will provide that the Bill applies to an unincorporated association as if it were a person, subject to the changes set out in clause 422. Therefore, where the Bill refers to ‘a person’, this will include an unincorporated association, subject to the remaining provisions in clause 422.

Subclause 422(2) will provide that an obligation that would be imposed on an unincorporated association by the Bill will be imposed on each member of the unincorporated association’s
management committee, but may be discharged by any of the committee members. For example, where a provision makes a person liable to a fee, this makes the unincorporated association liable to pay the fee, but any member of the management committee may pay the fee to discharge the liability for the unincorporated association as a whole.

Subclause 422(3) will provide that if an offence against the Bill would have been committed by the unincorporated association, the offence will be taken to have been committed by each member of the unincorporated association’s management committee who at the time the offence was committed:

- did the relevant act or made the relevant omission; or
- aided, abetted, counselled or procured the relevant act or omission; or
- was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Subclause 422(4) will provide that, if an unincorporated association contravenes a civil penalty provision under the Bill, the contraventions will be taken to have been committed by each member. That is, each member of the unincorporated association’s management committee will be liable to a civil penalty as if, at the time of the contravention, the member:

- did the relevant act or made the relevant omission; or
- aided, abetted, counselled or procured the relevant act or omission; or
- was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

Clause 423 Treatment of trusts

Clause 423 will set out how trusts (such as where the manager of an accredited property is a trust) will be treated under the Bill. Clause 423 reflects the reality that many businesses use trusts but that the usual treatment of persons with respect to liability does not apply to trusts.

Subclause 423(1) will provide that the Bill applies to a trust as if the trust were a person, subject to the changes set out in clause 423. Therefore, where the Bill refers to ‘a person’ this will include a trust, subject to the remaining provisions in clause 423.

Trusts with a single trustee

Subclause 423(2) will provide that if the trust has a single trustee:

- an obligation that would otherwise be imposed on the trust by the Bill will be imposed on the trustee instead; and
- an offence against the Bill that would otherwise have been committed by the trust will be taken to have been committed by the trustee instead.

Trusts with multiple trustees

Subclause 423(3) will provide that, if the trust has two or more trustees:

- an obligation that would otherwise be imposed on the trust by the Bill will be imposed on each trustee instead, but may be discharged by any of the trustees; and
- an offence against the Bill that would otherwise have been committed by the trust will be taken to have been committed by each trustee of the trust, if at the time the offence was committed, the trustee:
For example, where a provision makes a person liable to a fee, this makes the trust liable to pay the fee, but any trustee may pay the fee to discharge the liability for the trust.

**Contravention of civil penalty provisions**

Subclause 423(4) will provide that clause 423 applies to a contravention of a civil penalty provision in a corresponding way to which it applies to an offence. That is, if the trust has a single trustee, that trustee will be liable to the civil penalty. If the trust has two or more trustees, each trustee will be liable to a civil penalty if, at the time of the contravention, the trustee:

- did the relevant act or made the relevant omission; or
- aided, abetted, counselled or procured the relevant act or omission; or
- was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

**Division 6—Matters relating to export of livestock**

**Clause 424 Report to Parliament about export of livestock**

Clause 424 of the Bill will require regular reporting of certain information about the export of livestock. This information will provide the Parliament and members of the public with relevant information about this component of Australia’s export trade.

Subclause 424(1) will provide that, within one month after the end of each reporting period (which will be defined in subclause 424(4)), the Secretary must give the Minister a report containing the information set out in subclause 424(2) that has been provided to the Secretary during the reporting period in relation to the carriage of livestock on a vessel to a port outside Australian territory (whether or not the carriage occurred during the reporting period).

Subclause 424(2) will provide that the information must be based on reporting by the master of the vessel under Marine Orders made under subsection 342(1) of the *Navigation Act 2012* and must include the following:

- the name of the exporter;
- the month and year in which the completion of the loading of the livestock occurred;
- the port or ports at which the loading took place;
- the port or ports at which the livestock were discharged;
- the month and year in which the completion of the discharge of the livestock occurred at each port;
- the duration of the voyage;
- the type or types of livestock;
- the number of each type of livestock loaded;
- the total mortality for each type of livestock;
- the percentage mortality for each type of livestock;
any action taken by the Secretary in relation to the exporter as a result of the reporting by the master of the vessel.

Subclause 424(3) will require the Minister to 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.

Subclause 424(4) will provide that, for the purposes of clause 424, the reporting period is:

- the period of six months starting on the first 1 July or 1 January that occurs after the commencement of this clause;
- each subsequent period of six months.

Division 7—Miscellaneous

Clause 425 Compensation for acquisition of property

Subclause 425(1) will provide that the Commonwealth is liable to pay a reasonable amount of compensation to a person if the operation of the Bill would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from the person otherwise than on just terms (within the meaning of that paragraph).

Subclause 425(2) will provide that, if the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in either the Federal Court or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Clause 426 Privilege against self-incrimination

Clause 426 will provide that the privilege against self-incrimination will be overridden in certain limited cases where information will be required to be produced.

Person not entitled to refuse to answer questions, provide information or produce documents under certain provisions of this Act

Subclause 426(1) will provide that a person (as that term will operate in accordance with Division 5 of Chapter 11 of the Bill) is not excused from answering a question, providing information, or producing a document under clauses 66, 74, 107, 145, 185, 218, 235, 240, 244, 285 or 378 of the Bill, on the ground that the answer, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Use/derivative use indemnity applies to answer, information or document

However, while the privilege against self-incrimination will not be available in relation to the provisions listed in subclause 426(1), subclause 426(2) will afford some protection for an individual (that is, a natural person and not a body corporation, partnership, trust or unincorporated association). For an individual:

- the answer given, the information provided or the document produced; and
- answering the question, providing the information or producing the document; and
- any information, document or thing obtained as a direct or indirect consequence of the answering of the question, the provision of the information or the production of the document;
will not be admissible in evidence against the individual in any criminal or civil proceedings, except proceedings under, or arising out of, section 136.1, 137.1 or 137.2 of the *Criminal Code* or clauses 367, 368 or 369 of the Bill (false or misleading statements in applications and false or misleading information or documents) in relation to answering the question, providing the information or producing the document. The exception for proceedings arising under or out of the specified sections of the *Criminal Code* and clauses of the Bill is intended to provide an effective deterrent to persons who may provide false or misleading statements, information or documents in relation to the clauses listed in subclause 426(1).

The effect of subclauses 426(1) and 426(2) will be that an individual must provide the information, but the information cannot be used as evidence against the person nor can information that will be derived from the information be able to be used as evidence against the person. Receiving the correct and complete information will be necessary and appropriate in order to prevent damage to Australia’s trading reputation, but will not be necessary or appropriate to then be able to take civil or criminal proceedings against the person. It will be more important to ensure that a person is required to provide the correct information rather than to penalise the person.

The use or derivative use indemnity applies only to individuals, being natural persons, and not to corporations, partnerships, unincorporated associations or trusts. The judicial reasons for denying privilege to corporations include that corporations are not as vulnerable to the coercive power of the state as individuals, and that the privilege is a human right protecting individual (not corporate) freedom, privacy and dignity. In addition, the complexity of modern corporations and the importance of documentary records to business would make effective regulation (particularly detection of unlawful behaviour) too difficult if corporations were protected by privilege.

Company directors may claim the privilege in their own right where the disclosure would incriminate the officer personally.

*Privilege not otherwise affected*

Subclause 426(3) will provide that, except as provided for in subclause 426(1), nothing in the Bill affects the right of an individual to refuse to answer a question, provide information or produce a document on the ground that the answer, the information or the production of the document might tend to incriminate the individual or make the individual liable to a penalty. This will ensure that the privilege against self-incrimination will not be abrogated except where it will be necessary and appropriate to do so.

**Clause 427 Hindering compliance with the Act etc.**

Subclause 427(1) will provide that a person must not engage in conduct that hinders or prevents another person from:

- performing functions or duties, or exercising powers, under the Bill; or
- complying with the Bill or a direction given under the Bill.

While there is a similar offence in section 149.1 of the *Criminal Code*, that offence is limited to hindering the functions performed by a Commonwealth public official. Subclause 427(1) is broader than section 149.1 of the *Criminal Code* in that it will cover hindering the functions of persons performing functions or duties, or exercising powers, under the Bill (including
state, territory or third party authorised officers), persons who are directed to do something under the Bill or persons assisting a person performing a function under the Bill.

A note will be included at the end of subclause 427(1) that will provide that the physical elements of an offence against subclause 427(2) will be set out in subclause 427(1). The note will refer the reader to clause 370 of the Bill, which will provide further explanation of the operation of the physical elements of the offence.

Subclause 427(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 427(1). The penalty will be imprisonment for two years or a fine of 120 penalty units (or both). The maximum fine for a body corporate for a contravention of subclause 427(1) will be 600 penalty units.

Subclause 427(3) will provide that a person will be liable to a civil penalty if the person contravenes subclause 427(1). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subclause 427(1). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subclause 427(1) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subclause 427(3) is twice as high as the penalty available for the criminal offence. This will ensure the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The level of the penalty for both the fault-based offence and the civil penalty provision will also reflect the serious consequences of hindering or preventing another person from performing functions or duties or exercising powers under the Bill, or from complying with the Bill or a direction under the Bill. Engaging in this conduct may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Clause 427A Influencing a person performing functions or duties or exercising powers**

Subclause 427A(1) will provide that a person contravenes this subclause if the person engages in conduct with the intention of dishonestly influencing another person in the performance of the other person’s functions, or the exercise of the other person’s powers, under the Bill. This subclause ensures that persons purporting to dishonestly influence any person during the performance of their functions or duties, or exercise of their powers, under the Bill, are liable to a civil penalty.

Two notes will be included at the end of subclause 427A(1). Note 1 will provide a reference to the definition of dishonest in section 12. Note 2 will refer the reader to clause 370 of the
Bill, which provides further explanation of the operation of the physical elements of the offence.

Subclause 427A(2) will provide that a person will commit a fault-based offence if the person contravenes subclause 427A(1). The maximum penalty for an individual will be eight years’ imprisonment or a pecuniary penalty of 480 penalty units. The maximum pecuniary penalty for a body corporate for a contravention of subclause 427A(1) will be 2,400 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

In accordance with the Guide each offence should have a maximum penalty that is adequate to deter and punish a worst case offence, including repeat offenders. In addition the prescribed level of penalties must have an element of retribution or punishment, and rehabilitation in order to restore Australia’s trading reputation. The criminal penalty provisions reflect these principles.

The maximum criminal penalty will represent an appropriate sanction and reflect the seriousness of the offence within the relevant legislative scheme for regulating the control of exports and the risk that contravening behaviour may pose to human, plant and animal health, the environment and trade. Criminal penalties are necessary to achieve the legitimate objective of maintaining overseas market access for goods exported from Australia, complying with government or industry standards or requirements relating to the goods, ensuring the integrity of the goods and to give effect to Australia’s rights and obligations.

Subclause 427A(3) provides that a person will be liable to a civil penalty if the person contravenes subclause 427A(1). The civil penalty will be subject to a penalty of 960 penalty units. This will be the maximum civil penalty that a court will be able to order an individual to pay for a contravention of subclause 427A(1). The maximum civil penalty that a court will be able to order a body corporate to pay for a contravention of subclause 427A(1) will be 4,800 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The overriding purpose of the civil penalties will be to deter the reoccurrence of the offending conduct, whether by the same or a different person. This principle underpins the Parliament’s approach when setting the level of civil penalties in legislation and reflects the Parliamentary intention that the primary purpose of civil penalties is deterrence. Unlike criminal penalties, civil penalty proceedings are not concerned with retribution and rehabilitation but are primarily, if not wholly, protective in promoting the public interest in compliance.

The civil penalties reflect the underlying principle of deterrence. That is, if a person believes they are likely to be ordered to pay a substantial penalty if they contravene the Bill, and that penalty exceeds the actual or anticipated profit the person could expect to earn from the contravening conduct, then the person will make a rational decision that it is not worthwhile to engage in the contravening conduct.

The legislation will seek to prescribe a penalty that will have a meaningful deterrent effect. For example, a penalty that will not be seen as simply an acceptable cost of doing business. The penalty should confirm that such conduct will not be rewarded and that the penalty will outweigh any potential benefit.
The civil penalty in subclause 427A(3) is double the pecuniary penalty for the criminal offence in subclause 427A(2). This is to ensure that the civil pecuniary penalty serves as a deterrent. This also recognises that a civil penalty does not attract a term of imprisonment. The penalty for both the fault based offence, and the civil penalty provision, reflects the seriousness of the offence.

**Clause 428 Power or requirement to do or cause a thing to be done**

Subclause 428(1) will provide that, if a person has the power or is required under the Bill to do a thing, that person will be taken to have done the thing if they cause another person to do that thing on their behalf.

Subclause 428(2) will provide that if a person has the power or is required under the Bill to cause or direct a thing to be done, that person is taken to have caused or directed the thing to be done if the person does the thing themselves.

Clause 428 is intended to facilitate and clarify the exercise and accountability of functions or powers under the Bill, where necessary and appropriate. For example, where an authorised person may not have the skills or expertise required to complete a particular task, it may be necessary to engage a suitably qualified person to assist. It will not be a delegation power and does not shift the responsibility to the person who actually performs the function. For example, the Secretary may cause another person to issue identity cards under clause 306 of the Bill.

**Clause 429 Arrangements with States and Territories to assist in carrying out this Act**

Clause 429 will enable the Minister to enter into an arrangement with a relevant Minister of a State or Territory in relation to either or both of the following:

- the use of any place in the State or Territory for the purposes of the Bill, and the control and management of the place;
- any matters necessary or convenient to be arranged in order to enable the Commonwealth, the State or the Territory to assist each other for the purposes of achieving the objects of the Bill.

A note will be included at the end of clause 429 that will refer the reader to clause 294 of the Bill, which will provide that the Secretary may also enter into arrangements with State or Territory bodies for officers or employees of those bodies to be authorised officers under the Bill.

**Clause 430 Protection from civil proceedings**

Clause 430 will provide that persons performing functions or exercising powers under the Bill will have protection from civil proceedings. Civil proceedings include legal disputes between individuals based on one person (the first person) claiming that the other person (the second person) has failed in the first person’s legal duty. Civil proceedings also include proceedings to recover a civil penalty.

Protection from civil proceedings will enable persons who are required to perform functions or exercise powers under the Bill to continue to perform those functions and exercise those powers without being obstructed by the possibility of a continuous stream of repeated
challenges to the performance of those functions or the exercise of those powers. In addition, the provision will provide immunity from civil liability for conduct that may otherwise constitute a tort (for example, damage to property). Persons should be able to perform functions and exercise powers under the Bill without fear of being sued when they act in good faith. Immunity from civil liability where good faith is shown is necessary to maintain the integrity of the regulatory framework. However, protection from civil proceedings does not extend to criminal offences, for example theft or intentional destruction of documents or property.

Protection for the Commonwealth and protected persons

Subclause 430(1) will provide that no civil proceedings will lie against the Commonwealth or a protected person (which will be defined in subclause 430(4)) in relation to anything done, or omitted to be done, in good faith:

- by a protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by the Bill; or
- by a person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by the Bill.

The protection will only be available to a person who acts in good faith and will not be available to a person who acts in an impartial or capricious manner.

A note will be included at the end of subclause 430(1) that will refer the reader to the definition of this Act in clause 12 of the Bill, and will clarify that the reference to this Act includes a reference to instruments made under this Act. This will make it clear that the reference to this Act in clause 430 includes a reference to the rules made under clause 432 of the Bill, which will be legislative instruments.

Protection for persons assisting protected persons

Subclause 430(2) will provide that no civil proceeding will lie against a person in relation to anything done, or omitted to be done, in good faith by the person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by the Bill.

Relationship to certain other provisions

Subclause 430(3) will provide that clause 430 is subject to clause 425 of the Bill (acquisition of property). This means that the Commonwealth may still be liable to pay a reasonable amount of compensation if the operation of the Bill 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).
Meaning of protected person

Subclause 430(4) will provide that protected person means a person who is, or was, the Minister, the Secretary, an authorised officer, or an officer or employee of the Department. This clause ensures that the exercise of powers and the performance of functions under the Act by the Commonwealth and appropriately qualified and trained persons, are not unduly impeded so as to compromise the sound operation of the export control regime.

Clause 431 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

Clause 431 will provide that the rules made under clause 432 of the Bill may prescribe the circumstances in which a relevant Commonwealth liability of a person is taken to have been paid for the purposes of a specified provision of the Bill. Enabling the rules to prescribe circumstances in which a relevant Commonwealth liability is taken to have been paid will provide the Secretary with the flexibility to determine different circumstances in which a liability will be taken to have been paid. This may be relevant to different categories of persons, to the different types of export operations that are being carried out or the situation in which the liability arose.

If a relevant Commonwealth liability is taken to have been paid then it will be as if the liability does not exist. Therefore, if the liability is taken to have been paid, it will not impact on the capacity of the person to, for example, renew the accreditation of a property under clause 84 of the Bill.

Clause 432 Rules

Subclause 432(1) will provide that the Secretary may, by legislative instrument, make rules prescribing matters required or permitted by the Bill to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Bill.

This provides the Secretary with the flexibility and discretion to specify matters, processes and circumstances that are not provided for in the Bill. It is also necessary to accommodate the range of export operations, functions and powers to which the Bill relates. These matters, processes and circumstances may arise for a range of technical and administrative reasons, and the flexibility allows for matters, processes and circumstances to be prescribed quickly if required.

There will be a number of provisions in the Bill that enable matters to be prescribed by the rules and which will trigger the rule making power which will be set out in clause 432.

A note will be included at the end of subclause 432(1) that will provide that the rules may make different provision with respect to different matters or different classes of matters and will refer the reader to subsection 33(3A) of the Acts Interpretation Act.

As the rules are legislative instruments, the Legislation Act will apply to the rules and govern such matters as registration, Parliamentary oversight (disallowance) and sunsetting. In addition, clause 289 of the Bill will enable the Minister to give directions to the Secretary in relation to the performance of the Secretary’s functions or the exercise of the Secretary’s powers in making rules under clause 432.
Subclause 432(2) will be an avoidance of doubt provision that will set out the limitations on what the rules may deal with. This subclause will provide that the rules may not do the following:

- create an offence or civil penalty;
- provide powers of arrest or detention, or entry, search or seizure;
- impose a tax;
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in the Bill;
- directly amend the text of the Bill.

In accordance with Parliamentary oversight requirements, these matters must be either set out in Acts or be authorised by an Act to be in a regulation.

Subclause 432(3) will provide that, despite subsection 14(2) of the Legislation Act, the rules may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any of the following as in force or existing from time to time:

- any matter contained in:
  - the document (the original document) published by the Department titled Australian Standards for the Export of Livestock; or
  - any document (the later document) that is published by the Department after the original document and that sets out standards for the export of Australian livestock (whether or not the title of the later document is the same as the title of the original document);
- any matter contained in:
  - the document titled Australian Fish Names Standard AS 5300-2015; or
  - any later Australian Standard that sets out Australian fish names;
- any matter contained in any instrument or writing that sets out requirements for export operations in Australian territory, or in a part of Australian territory, in relation to a kind of prescribed goods that are to be imported into a country, and is made by the authority or body that is responsible for regulating the importation of prescribed goods of that kind into that country;
- any matter contained in the Australia New Zealand Food Standards Code;
- any matter contained in the Codex Alimentarius issued by the body known as the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organization (which could in 2019 be viewed on the website of the Food and Agriculture Organization of the United Nations (http://www.fao.org));
- any matter contained in any instrument or writing made by the Office International des Epizooties (also known as the World Organisation for Animal Health), or under the International Plant Protection Convention;
- any matter contained in any instrument or writing that sets out, or provides a method for calculating, the tariff rate quota for the importation of a kind of goods into a country, and is made by the authority or body that is responsible for regulating the importation of goods of that kind into that country.

Subsection 14(2) of the Legislation Act provides that, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time and will need to commence at short notice.
Subclause 432(3) will provide a contrary intention to subsection 14(2) of the Legislation Act in that the rules may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in the instruments referred to in clause 432 from time to time. That is, the incorporation of certain documents by reference will not be limited to the instrument as at the date of incorporation. It is intended that whenever documents described in paragraphs 432(3)(c) and (g) are applied, adopted or incorporated by the rules, these documents will be publicly available. The purpose of the provisions in subclause 432(3) is to ensure that the rules can be made to apply current regulatory standards to Australian exports.

Five notes will be included at the end of subclause 432(3). Note 1 will clarify that the document referred to in subparagraph 432(3)(a)(i) could, in 2019, be viewed on the Department’s website, and will provide the web address for that website, being http://www.agriculture.gov.au.

Note 2 will clarify that the document referred to in subparagraph 432(3)(b)(i) could, in 2019, be viewed at a website, the web address of which is http://www.fishnames.com.au.

Note 3 will clarify that the document referred to in paragraph 432(3)(e) could, in 2019, be viewed on the website of the Food and Agriculture Organization of the United Nations, and will provide the web address for that website, being http://www.fao.org.

Note 4 will advise the reader that the Office International des Epizooties referred to in subparagraph 432(3)(f)(i) was created by the International Agreement for the Creation at Paris of an International Officer for Dealing with Contagious Diseases of Animals, done at Paris on 25 January 1924. It will also advise that the Agreement can be found in the treaty publication entitled Australian Treaty Series 1925 No. 15, and that the relevant citation for the Agreement is ([1925] ATS 15). The note will also advise the reader that the Agreement could, in 2019, be viewed in the Australian Treaties Library on the AustLII website, and will provide the web address for that website, being http://www.austlii.edu.au.

Note 5 will clarify that rules made for the purposes of clause 29 of the Bill may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing, as in force or existing from time to time, if the instrument or other writing is published on the Department’s website (http://www.agriculture.gov.au).

Note 6 will refer the reader to paragraph 14(1)(b) of the Legislation Act, and will provide that the rules may also apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing as in force or existing at the time when the rules made under clause 432 commence.

Subclause 432(4) will provide that in clause 432, a reference to the Bill does not include a reference to instruments made under the Bill or the Regulatory Powers Act.

Further explanation of the rules is included at the beginning of the notes on clauses in this explanatory memorandum.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


Export Control Bill 2019

The Bill is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The purpose of the Bill is to provide the primary legislative means for the Australian Government to regulate export operations by domestic exporters, including by providing inspection and certification of goods being exported from Australian territory. In achieving this purpose, the Bill aims to promote the right to health and the right to an adequate standard of living, including the right to adequate food, as provided under the International Covenant on Economic, Social and Cultural Rights (the ICESCR).

Australia’s existing legislative framework for agricultural exports (including fish, forestry, fibre and food products) was developed over 35 years ago, and currently comprises 17 Acts (including the Export Control Act 1982 and the Australian Meat and Live-stock Industry Act 1997) and more than 40 legislative instruments. The framework has served Australia well by enabling the export of agricultural products that meet importing country requirements.

Many of the legislative instruments that support the existing legislative framework are due to sunset (cease to be law) on 1 April 2021 in accordance with Part 4 of Chapter 3 of the Legislation Act 2003. As such, those instruments must be reviewed before they can be remade or repealed. The Department of Agriculture (the department) took the opportunity to review those legislative instruments as part of the review of the entire agricultural exports legislative framework in 2015 (the Review). The Review sought to verify whether farmers and exporters are supported by contemporary, flexible and efficient legislation, and whether Australia’s trading partners continue to have confidence in Australia’s agricultural exports.

The Review found that, while the existing legislative framework has served Australian exporters well, there was scope for improvements to better support farmers and exporters to meet future importing country requirements and seize trade opportunities in a changing global environment. The Bill, which is informed by the Review, is intended to replace the existing legislative framework for agricultural exports to provide more contemporary, flexible and efficient legislation that better regulates Australia’s agricultural exports into the future.

The Bill is designed to draw upon, support and give effect to various international and domestic agreements and obligations. Internationally, these include:

- the General Agreement on Tariffs and Trade 1994 (GATT 1994);
- the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement);
- the Agreement on Technical Barriers to Trade (TBT Agreement);
- the International Plant Protection Convention;
- the agreement establishing the ASEAN-Australia-New Zealand Free Trade Area;
- the Australia-Chile Free Trade Agreement;
- the Australia-New Zealand Closer Economic Relations Trade Agreement;
• the Australia-United States Free Trade Agreement;
• the China-Australia Free Trade Agreement;
• the Japan-Australia Economic Partnership Agreement;
• the Korea-Australia Free Trade Agreement;
• the Malaysia-Australia Free Trade Agreement;
• the Singapore-Australia Free Trade Agreement;
• the Thailand-Australia Free Trade Agreement.

The Bill creates a framework for the regulation of exports from the Australian territory. It does this primarily by allowing the Secretary to make the Export Control Rules (rules). These rules will be able to prohibit the export of certain kinds of goods (called prescribed goods) unless they meet the conditions set out in the rules. The rules can prohibit the export of goods to a particular place unless they meet these conditions, or they may prohibit the export of goods generally unless they meet these conditions.

The conditions of the export of prescribed goods will generally be provided for in subclause 29(2). They include that a person must hold an export licence, or that certain kinds of export operations must be conducted at an accredited property or registered establishment, or in accordance with an approved arrangement or export licence. ‘Export operations’ will be a broadly defined term covering all operations carried out in relation to the export of goods, from their production and preparation for export to their export and delivery at their final overseas destination.

List of human rights

The Bill will engage, or has the potential to engage, the following rights:

• Article 6 of the ICESCR – Right to work;
• Article 11(1) of the ICESCR – Right to an adequate standard of living, including food, water and housing;
• Article 12 of the ICESCR – Right to health;
• Article 6 of the ICCPR – Right to life;
• Article 14 of the ICCPR – Criminal process rights, including the right to the presumption of innocence, the right to be free from self-incrimination, and the right not to be tried or punished again for an offence for which a person has already been finally convicted or acquitted;
• Article 15 of the ICCPR – Right not to be held guilty of a criminal offence on account of any act or omission that did not constitute a crime when it was a committed, and the right to benefit from the imposition of lighter penalties;
• Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy;
• Article 22 of the ICCPR – Right to freedom of association.

Assessment of compatibility with human rights

Right to work (Article 6 of the ICESCR)

Article 6(1) of the ICESCR protects the right of everyone to the opportunity to gain the person’s living by work that he or she freely chooses or accepts. The United Nations Committee on Economic, Social and Cultural Rights (the UNCESCR) has stated that the right to work also encompasses the right not to be unjustly deprived of work. This right may be
subject only to such limitations “as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.

The Bill creates a framework which engages the right to work. This occurs in two ways. First, the Bill promotes the right to work, because it enables Australian businesses to meet the importing country requirements necessary to export their goods. Second, it may limit the right to work by regulating the persons who can participate in the export supply chain for prescribed goods.

Promotion of the right to work

The Bill will set out the overarching legislative framework for the Government to regulate the export of goods from Australian territory. Many importing countries require certification from the Australian Government that goods meet those countries’ requirements. Without such certification, importing countries will not allow goods to be imported. The Bill establishes a framework to enable the Government to make the certifications necessary to assure importing countries that their requirements have been met. It ensures that this framework is flexible and adaptable to meet any changes in those requirements. The Bill will enable Australian businesses to establish that goods they export meet relevant importing country requirements, and allow them to participate in the export supply chain.

The Bill therefore promotes the right to work. By enabling the export of goods to overseas markets, it enables people to produce and prepare goods for export, and to export those goods. The Bill promotes those persons’ ability to work in their chosen vocation. The Bill also promotes economic growth for Australian exporters, increasing the number and variety of employment opportunities in the Australian labour market. It enables a greater number of people to participate in the export supply chain, including in the production and preparation of goods for export, particularly in regional areas, where opportunities are more limited compared to non-regional areas.

Potential limitation of the right to work

A person who wishes to produce or prepare prescribed goods for export, export prescribed goods or conduct other kinds of export operations may need to obtain certain approvals from the Department in order to satisfy the conditions on exporting prescribed goods, set pursuant to clause 29. The precise approvals required will depend on the type of prescribed goods they are seeking to prepare, produce or export. The primary approvals will be those set out in Chapters 3 to 6 of the Bill. For example, the conditions on export of some types of goods may require:

- the person producing the goods for export to do so on an accredited property
- the person preparing the goods for export to do so in a registered establishment and in accordance with an approved arrangement; and
- the person exporting the goods to hold an export licence.

In this sense, Chapters 2, 3, 4, 5 and 6 of the Bill contain provisions that may operate to limit the right to work that is protected under article 6 of the ICESCR. This arises in the Secretary’s decision about whether to grant a person an approval to conduct export operations in relation to a particular kind of prescribed goods, such as accrediting a property, registering an establishment, approving an arrangement or granting an export licence. This also arises in the Secretary’s ability to revoke such an approval.
The Bill will implement a robust regulatory system that will ensure the integrity of goods proposed for export across the entire supply chain. It is appropriate that the Secretary will have the ability to curtail behaviours that are inconsistent with the objects of the Bill, by ensuring that people who apply for and who hold approval to conduct export operations have the appropriate premises, equipment, facilities, skills or knowledge to conduct those operations. Further, under clause 112, a person who wishes to register an establishment must also satisfy the fit and proper person test in clause 372. The persons they propose to be in management or control of the export operations to be carried out at the establishment must also satisfy the fit and proper person test. Under clause 138, the Secretary may revoke the registration of an establishment if the occupier or a person in management or control of export operations ceases to be a fit and proper person.

The integrity of Australia’s agricultural export framework is underpinned by appropriate regulatory controls, including who is permitted to perform certain roles within it and who should be granted with certain privileges. A fit and proper person test is necessary for the legitimate objective of ensuring that persons who are approved to export goods from Australia are persons who are trustworthy and have demonstrated the required attributes necessary to uphold Australia’s trading reputation.

Additionally, a fit and proper person test will make sure that persons or companies exporting Australian goods are suitable entities to be responsible for the appropriate management of relevant risks. Ensuring suitable entities are undertaking export activities gives strength to Australia’s trading partners in the integrity of our agricultural export framework. The high standards required of the entities participating in the export process places certain limitations on the right to work, however it does so in a non-arbitrary way, and is necessary for our trading partners continued confidence.

The ability for the Secretary to revoke an accreditation, registration, approval or licence works as a deterrent for the manager, occupier or holder to discourage them from engaging in activities that could breach the conditions of their accreditation, registration, approval or licence, and thus affect their livelihood. This will consequently encourage participants in the export supply chain to ensure that they and their staff are aware of their regulatory obligations. Being able to suspend a person’s export operations will provide an opportunity for a breach of the Bill to be investigated, without the risk of unsafe goods continuing to be exported during that time. Further, persons who will run export businesses under the Bill will reasonably be expected to be aware that they must comply with the requirements set out in the Bill.

The following clauses will give the Secretary the power to affect a person’s ability to carry out export operations, and consequently may limit their right to work:

- clause 29 (Chapter 2);
- clauses 79, 84, 89, 90, 94, 95, 102 and 103 (Chapter 3);
- clauses 112, 117, 122, 123, 127, 128, 138 and 139 (Chapter 4);
- clauses 151, 156, 163, 165, 171, 172, 179 and 180 (Chapter 5); and
- clauses 191, 196, 199, 201, 205, 206, 212 and 213 (Chapter 6).

The potential restrictions in Chapters 2, 3, 4, 5 and 6 on who may participate in export operations are necessary to ensure ongoing market access for all goods from Australia. Conduct that contravenes the requirements of the Bill may undermine the integrity of the regulatory framework provided for by the Bill. This conduct may impact the confidence of
trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods. One person’s non-compliance may limit others’ right to work, particularly where market access is closed or severely restricted.

Further, the requirement under paragraphs 112(2)(a), 117(2)(a), 123(2)(c), 127(1)(b), and 138(1)(b) that occupiers of, and persons in management or control of export operations at, a registered establishment be fit and proper persons may limit those persons’ ability to work in their chosen vocation. People who are not fit and proper persons will not be able to participate in the management or control of export operations at a registered establishment.

The Government places a significant amount of trust in those who prepare goods for export at registered establishments that they will do so in accordance with the requirements of the Bill and importing country requirements. While in some cases goods will be prepared for export at an establishment with an ongoing Government presence, in others the Government’s supervision takes the form of periodic and random audits. Given the potential consequences of exporting non-compliant goods detailed above, the Government needs to be certain that the persons responsible for export operations at registered establishments will not abuse the trust placed in them. The requirement that occupiers of, and persons in management or control of export operations at, a registered establishment be fit and proper persons is necessary to ensure that these people can receive the Government’s trust, and that they will not affect the ability for all persons to access overseas markets.

Each of the clauses 79, 84, 112, 117, 151, 156, 191 and 196 sets out the grounds on which the Secretary will be able to refuse an application or refuse to renew an accreditation, registration, approval or licence.

Similarly, each of the following clauses sets out the grounds on which the Secretary will be able vary, suspend or revoke an accreditation, registration, approval or licence:

- 89, 90, 94, 95, 102 and 103 (Chapter 3);
- 122, 123, 127, 128, 138 and 139 (Chapter 4);
- 163, 165, 171, 172, 179 and 180 (Chapter 5); and
- 199, 201, 205, 206, 212 and 213 (Chapter 6).

For variations, suspensions and revocations, these include circumstances where:

- the integrity of the prescribed goods cannot be ensured;
- the grounds for approving the accreditation, registration, approval or licence are no longer being met; or
- the manager of the property, occupier of the establishment, holder of an arrangement or holder of a licence has failed to comply with the conditions of their accreditation, registration, approval or licence.

These powers are necessary to support the legitimate objectives of the Bill, which include ensuring goods that are exported from Australian territory meet importing country requirements and comply with government or industry standards or requirements, and to give effect to Australia’s international obligations.

These clauses set out clear grounds on which the Secretary can make a decision to refuse an application or, refuse to renew, or vary, suspend or revoke an accreditation, registration, approval or licence. These constraints mean that the powers will not be able to be imposed
arbitrarily. The decision-maker will be required to provide the relevant person with a written notice of their decision to suspend, revoke, or not to renew. This includes the reasons for their decision. Unless there is an urgent safety concern, this written notice will take the form of a ‘notice to show cause’, and a decision on the suspension or revocation will not take place until the person has had the opportunity to respond.

The Bill will not restrict the ability of a person to work domestically. While decisions made under the Bill may result in a person losing access to the export market, the Bill will not restrict activities that relate to the domestic market. Additionally, some of the mechanisms in the clauses noted above will only limit a person’s ability to export to a particular place (for example, a country), which means that they will still have the ability to divert those goods to another country and be able to continue export operations.

Training and qualification requirements for auditors, assessors, third party authorised officers and analysts

The Bill will require that the Secretary must not approve a person to conduct audits, undertake assessments of goods, analyse samples or authorise a person to be a third party authorised officer, unless the person satisfies the training and qualification requirements determined by the Secretary. The following clauses give the Secretary the power to determine training and qualification requirements:

- clauses 273, 281 and 291 (Chapter 9); and
- clause 413 (Chapter 11).

These training and qualification requirements are particular to each role, and are to be determined in writing, by the Secretary.

Prescribing training and qualification requirements to perform these roles engages the human right to work. These qualifications are necessary and proportionate to ensure that persons who are conferred powers can uphold the regulatory framework set out in the Bill. The roles of auditor, assessor and analyst are essential to uphold the integrity of the regulatory framework. As such, these qualifications are also necessary to support the legitimate objects of the Bill, including ensuring goods exported from Australian territory meet importing country requirements.

Summary

The Bill is compatible with the right to work in Article 6(1) of the ICESCR because it promotes that right and, to the extent that it may limit that right, that limitation is reasonable, necessary and proportionate to the achievement of a legitimate objective.

Right to an adequate standard of living, including food, water and housing (Article 11(1) of the ICESCR)

Article 11(1) of the ICESCR protects the right to an adequate standard of living, including food, water and housing. To protect this right, governments have an obligation to ensure the availability and accessibility of the resources necessary for the realisation of the right.
In its *General Comment No 12 (May 1999)*, the UNCESCR noted that “the core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”. The UNCESCR also noted that “free from adverse substances” sets requirements for food safety, and for a range of protective measures by both public and private means, to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain.

The Bill promotes the right to adequate food by enabling trade in agriculture products from Australian territory to other countries. Goods regulated by the Bill may include dairy, eggs, fish, meat, fruit and vegetables. The Bill will also assist other countries to provide additional food to their populations and provide them with goods that may not be available domestically.

The Bill contains a number of regulatory tools that are designed to ensure goods that are exported from Australian territory are safe and fit for human consumption. Persons wanting to export goods from Australian territory will be required to comply with the regulatory scheme set out by the Bill. The system will ensure that goods exported from Australian territory are monitored at all points in the supply chain. The Bill will also provide for an audit and assessment regime to ensure that the requirements under the Bill are met.

**Summary**

The Bill is compatible with the right to an adequate standard of living, including food, water and housing, under Article 11(1) of the ICESCR because it positively engages and promotes that right.

**Right to health (Article 12 of the ICESCR)**

Article 12 of the ICESCR promotes the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment and control of epidemic, endemic, occupational and other diseases (Article 12(2) of the ICESCR).

In its *General Comment No 14 (August 2000)*, the UNCESCR stated that health is a “fundamental human right indispensable for the exercise of other human rights”, and that the right to health is not to be understood as the right to be healthy, but rather as a right to a system of health protection that provides equal opportunity for people to enjoy the highest attainable level of health.

Clause 23 of the Bill will prohibit absolutely the export of split vetch from Australian territory. Split vetch (being split seed of *Vicia sativa*) is a product that looks like lentils but cannot be consumed by humans, and has caused death in some cases. The ability to prohibit goods from export absolutely promotes the right to health, as it will prevent goods that pose a serious health risk from being exported from Australian territory.

Clause 24 of the Bill will enable the Minister to temporarily prohibit the export of goods from Australian territory, or from a part of Australian territory, for a period of up to six months. This determination will be able to be made if the Minister is satisfied it is necessary to protect human, animal or plant life or health. This clause in the Bill promotes the right to health as it
will prevent goods that may cause a serious health risk from being exported from Australian territory on a temporary basis.

Clause 29 of the Bill will enable the Secretary to set conditions on the export of prescribed goods. These conditions may relate, amongst other things, to the manner in which the goods are prepared for export, including to ensure that they are fit for human consumption. The Bill will allow for a regulatory regime that requires prescribed goods for export to meet domestic, importing country and international hygiene and sanitary standards (where relevant). By allowing for the regulation of those matters, the Bill ensures that prescribed goods that are exported from Australia for human consumption are safe and free of disease.

Summary

The Bill is compatible with the right to health under Article 12 of the ICESCR because it positively engages and promotes that right.

Criminal process rights (Article 14 of the ICCPR)

Article 14 of the ICCPR requires that, in the determination of criminal charges, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Various other rights are provided for persons charged with criminal offences.

Monitoring and investigation powers

Clauses 326 and 329 of the Bill will apply the standard provisions for the use of monitoring and investigation powers in Parts 2 and 3 of the Regulatory Powers (Standard Provisions) Act 2014 (Regulatory Powers Act) in relation to the offence and civil penalty provisions of the Bill. Accordingly, the monitoring and investigation framework for the Bill will be provided for by Parts 2 and 3 of the Regulatory Powers Act.

The application of the standard provisions in Parts 2 and 3 of the Regulatory Powers Act under clauses 326 and 329 of the Bill, as well as the compliance and enforcement powers in Parts 4, 5 and 6 of Chapter 10 of the Bill, will engage the fair trial rights, minimum guarantees in the determination of a criminal charge, and other criminal process rights contained in Article 14 of the ICCPR.

Applying the standard provisions relating to monitoring powers in Part 2 of the Regulatory Powers Act to the Bill will enable an authorised person to enter any premises and exercise monitoring powers for the purpose of determining whether provisions subject to monitoring have been, or are being, complied with, or determining whether information subject to monitoring is correct. However, an authorised person may not enter the premises unless the occupier has provided consent, the authorised person is in possession of a monitoring warrant, or the premises are part of an accredited property or registered establishment (see clauses 346 and 347).

Subclause 326(1) of the Bill provides that “this Act” is subject to monitoring under Part 2 of the Regulatory Powers Act. Clause 12 of the Bill defines this Act to include the legislative instruments made under the Bill and the Regulatory Powers Act as it applies in relation to the Bill. Subclause 326(2) of the Bill provides that information given in compliance or purported compliance with a provision of “this Act” is subject to monitoring under Part 2 of the Regulatory Powers Act.
A monitoring warrant may only be issued by a magistrate or a judge of certain specified
courts of law. The general monitoring powers of an authorised person set out in Part 2 of the
Regulatory Powers Act include the power to:

- search premises and any thing on the premises;
- examine or observe activities on the premises;
- inspect documents on the premises;
- ask persons on the premises questions and request the production of documents;
- bring equipment and materials onto the premises;
- inspect, examine, take measurements of or conduct tests on any thing on the premises;
- take images of things or make copies of documents;
- operate electronic equipment; and
- secure evidence of contraventions for up to 24 hours.

Further, if entry is under a monitoring warrant, the authorised person may:

- require persons on the premises to answer questions or produce documents relating to
  the provisions or information that are subject to monitoring; and
- secure electronic equipment for the purposes of obtaining expert assistance.

Subclause 329(1) of the Bill provides that an offence against or civil penalty provision of
“this Act”, and an offence against the Crimes Act or the Criminal Code that relates to
“this Act”, is subject to investigation under Part 3 of the Regulatory Powers Act.

Accordingly, an authorised person will be able to enter any premises and exercise
investigation powers where the authorised person suspects on reasonable grounds that there
may be material on the premises related to the contravention of an offence provision or a civil
penalty provision subject to investigation under Part 3 of the Regulatory Powers Act.
However, an authorised person may not enter the premises unless the occupier has provided
consent or the authorised person is in possession of an investigation warrant.

An investigation warrant may only be issued by a magistrate or a judge of certain specified
courts. The general investigation powers of an authorised person set out in Part 3 of the
Regulatory Powers Act include the power to:

- search the premises and any thing on the premises
- inspect, examine, take measurements of or conduct tests on evidential material
- ask persons on the premises questions and request the production of documents
- bring equipment and materials onto the premises
- take images of things, and
- operate electronic equipment.

Further, if entry is under an investigation warrant, the authorised person may:

- seize a disk, tape or other storage device on the premises if:
  - it is not practicable to put the evidential material into documentary form or
    transfer it to a separate disk, tape or other storage device brought onto the
    premises for the exercise of investigation powers; or
  - possession of the equipment or disk, tape or other storage device by the
    occupier could constitute an offence;
- seize evidential material that is not of the kind specified in the warrant if:
Parts 2 (monitoring) and 3 (investigation) of the Regulatory Powers Act provide questioning powers to authorised persons. Under subsection 24(3) of the Regulatory Powers Act, where entry is authorised by a monitoring warrant, the authorised person may require any person on the premises to answer questions or produce documents relating to information or provisions subject to monitoring. If the person fails to do so, this is an offence under subsection 24(5) of the Regulatory Powers Act. The criminal penalty for this offence is 30 penalty units. Similarly, under section 54(3) of the Regulatory Powers Act an authorised person who enters premises under an investigation warrant may require persons on the premises to answer questions or produce documents relating to evidential material of the kind specified in the warrant. If the person fails to do so, this is an offence under subsection 54(5) of the Regulatory Powers Act. The criminal penalty for this offence is 30 penalty units.

Subsections 24(5) and 54(3) of the Regulatory Powers Act do not limit the person’s access to a fair trial or limit the other criminal process rights in any way. Sections 17 and 47 of the Regulatory Powers Act make it clear that the privileges against self-incrimination and legal professional privilege have not been abrogated by the monitoring and investigation powers provisions, including the offence provisions. These protections guarantee the criminal process rights protected in paragraphs 14(3)(d) and (g) of the ICCPR. The usual guarantees and criminal process rights will apply to these offences and are not abrogated by the application of Parts 2 and 3 of the Regulatory Powers Act to the Bill.

Civil penalties

Nature of penalties

Prescribing conduct that is subject to a civil penalty, and applying the civil penalty provisions of the Regulatory Powers Act, could engage criminal process rights if the imposition of civil penalties is classified as ‘criminal’ under international human rights law.

Guidance Note 2: Offence provisions, civil penalties and human rights (December 2014), which is published by the Parliamentary Joint Committee on Human Rights, states that civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law.

When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a ‘criminal’ penalty for the purposes of the ICCPR. Determining whether penalties could be considered to be criminal under international human rights law requires consideration of the classification of the penalty provisions under Australian domestic law, the nature and purpose of the penalties, and the severity of the penalties.
The Bill seeks to create various civil penalty provisions, which will all be expressly classified as civil penalties for the purposes of Australian domestic law. The following subclauses in the Bill will create civil penalties that apply pecuniary penalties in the form of a debt payable to the Commonwealth:

- 30(3), 31(5), 32(5), 33(3) and 33(6), 34(4), 35(5), 36(5), 37(4) and 37(8), 38(4), 39(5), 40(5), 41(4) and 41(5), 42(4), 43(5), 44(5), 45(3) and 45(6), 46(5), 47(5), 48(4), 49(4), 50(4), 55(4), 66(3), 74(3) and 76(2) (Chapter 2);
- 100(3), 105(6), 106(3) and 106(6), 107(3), 108(2) and 109(2) (Chapter 3);
- 122(4), 133(3), 136(3), 141(3), 142(6), 143(3), 144(3) and 144(6), 145(3), 146(2) and 147(3) (Chapter 4);
- 159(4), 163(3), 177(3), 182(3), 183(6), 184(4) and 184(8), 185(3), 186(2), 187(3) and 188(3) (Chapter 5);
- 215(3), 216(6), 217(4) and 217(8), 218(3) and 219(2) (Chapter 6);
- 227(5), 235(3), 236(2) and 240(3) (Chapter 7);
- 244(3), 249(3), 250(4), 252(4), 253(4), 258(3), 259(3), 260(3), 261(3) and 262(3) (Chapter 8);
- 285(6), 293(2), 298B(3), 302(2), 304(3), 305(5) and 320(4) (Chapter 9);
- 364C(1), 364C(2) and 364D(2) (Chapter 10A)
- 364D(2), 367(1), 368(1), 369(1) and 374(6) (Chapter 10); and
- 378(3), 417(2), 427(3) and 427A(3) (Chapter 11).

The purpose of these penalties is to encourage compliance with the obligations relating to the export of goods from Australian territory as set out in the Bill. The civil penalty provisions in the Bill will deter non-compliance with the requirements in the Bill for exporting goods. As noted above, non-compliance with these requirements could have significant and lasting negative consequences for Australia’s economy and trading relationships, as well as people who produce, prepare and export goods. The Bill includes civil penalties for provisions which are regulatory in nature, and where a pecuniary penalty is the appropriate remedy for non-compliance.

The civil penalty provisions do not seek to impose criminal liability and will not lead to the creation of a criminal record. The penalties will only apply to those persons, exporters and export-related businesses seeking to export goods from Australian territory, rather than to the public in general. Those persons will reasonably be expected to be aware of their obligations under the proposed legislation, and will have voluntarily sought the approval of the Commonwealth to engage in an activity that is regulated under very clear conditions. Further, the imposition of civil penalties is not dependent on a finding of guilt.

The proposed civil penalty provisions in the Bill will be subject to civil penalties ranging from 60 penalty units through to 4,000 penalty units for individuals. Due to the proposed application of the standard provisions in Part 4 of the Regulatory Powers Act by clause 356 of the Bill, the proposed civil penalty provisions will attract the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act, except in relation to those civil penalty provisions detailed in clause 50A. Subsection 82(5) of the Regulatory Powers Act provides that, where the person is not a body corporate, a pecuniary penalty must not be more than the penalty specified for the civil penalty provision. If the person is a body corporate, the pecuniary penalty must not be more than five times the pecuniary penalty specified for the civil penalty provision, unless otherwise specified. Clause 50A of the Bill will specify those penalty provisions to which a pecuniary penalty, calculated in accordance with the formula in subclause 50A(2), will apply for a contravention by a body corporate. This means that
applicable civil pecuniary penalties for bodies corporate will range from 300 penalty units to 20,000 penalty units, or to an amount calculated in accordance with Clause 50A.

Further, clause 364C of the Bill will establish a civil penalty provision, subject to a pecuniary penalty of up to 10,000 penalty units, for executive officers of bodies corporate where:

- An executive officer of a body corporate contravenes a civil penalty provision as set out in clause 364C(1), 364C(2) and 364C(3); and
- the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
- the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- the officer failed to take all reasonable steps to prevent the contravention.

Clause 364C of the Bill recognises the extra responsibility that executive officers will have in ensuring a body corporate engages in appropriate conduct, including their duty to take action to prevent contraventions of the obligations in the Bill.

The civil pecuniary penalties for the proposed civil penalty provisions in the Bill have been set by reference to the Guide. They seek to reflect the seriousness of the contravening conduct and the risk that the conduct may pose to Australia’s trading reputation, the integrity of the export system, or human, animal or plant life or health. Higher penalties are proposed for contraventions involving aggravated circumstances.

The proposed application of the standard provisions in Part 4 of the Regulatory Powers Act by clause 356 of the Bill means that section 85 of the Regulatory Powers Act will apply to the proposed civil penalty provisions in the Bill. Section 85 of the Regulatory Powers Act provides that a relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character. However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions. There are no criminal consequences associated with civil penalty orders for multiple contraventions; for example, they do not carry the possibility of imprisonment. As such, these civil penalties are not sufficiently severe that they could be considered to be criminal penalties for the purposes of Australia’s human rights obligations.

These factors suggest that the proposed civil penalty provisions in the Bill are civil rather than criminal in nature. Accordingly, the criminal process rights provided for by Articles 14 and 15 of the ICCPR are not engaged by the proposed civil penalty provisions in the Bill.

Overlap of criminal and civil penalties

Sections 90 and 91 of the Regulatory Powers Act will apply to civil penalty proceedings brought under the Bill as a result of clause 356. These clauses concern the relationship between criminal and civil penalty proceedings.

Section 90 of the Regulatory Powers Act clarifies that criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision, regardless of whether a civil penalty order has been made against the person in relation to the contravention. This section recognises the importance of criminal proceedings and criminal
penalties in sanctioning contraventions of a triggering Act (i.e. an Act that seeks to apply the standard provisions of the Regulatory Powers Act), and ensures that criminal remedies are not precluded by earlier civil action.

Section 90 of the Regulatory Powers Act engages the process rights in Article 14 of the ICCPR, but does not limit those rights. Article 14(7) of the ICCPR provides that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”. This prohibition on double jeopardy is a fundamental safeguard in the common law of Australia. It means that a person who has been convicted or acquitted of a criminal charge is not to be re-tried for the same or substantially the same offence.

As section 90 of the Regulatory Powers Act permits both civil and criminal proceedings, but not multiple criminal proceedings for the same conduct, Article 14(7) of the ICCPR is not infringed. Further, section 88 of the Regulatory Powers Act provides that a court cannot make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

Section 91 of the Regulatory Powers Act provides that evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
- the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Section 91 of the Regulatory Powers Act ensures that information or documents produced during civil proceedings are not relied upon to support subsequent criminal proceedings, unless those proceedings are criminal proceedings relating to falsifying evidence in civil proceedings. Accordingly, that section engages, but does not limit, the criminal process rights in Article 14 of the ICCPR.

**Infringement notices**

Clause 359 of the Bill seeks to apply the standard infringement notice provisions in Part 5 of the Regulatory Powers Act to 36 provisions of the Bill. Accordingly, the enforcement framework for infringement notices issued in relation to provisions of the Bill identified in the table in subclause 359(1) of the Bill will be provided for by Part 5 of the Regulatory Powers Act.

Of the 36 provisions of the Bill identified in the table in subclause 359(1), 25 provisions are civil penalty provisions and 9 provisions are strict liability offences. Accordingly, infringement notices will be able to be issued under the Regulatory Powers Act in relation to an identified strict liability offence and identified civil penalty provisions in the Bill. An infringement notice issued under Part 5 of the Regulatory Powers Act is a notice of a pecuniary penalty imposed on a person. It sets out the particulars of an alleged contravention of a law. An infringement notice gives the person to whom the notice is issued the option of paying the penalty set out in the notice, or electing to have the matter dealt with by a court.
There are no criminal consequences associated with infringement notices for civil penalty provisions. For example, they do not carry the possibility of imprisonment if the person does not pay the penalty or attend court.

Section 104 of the Regulatory Powers Act provides that an infringement notice is required to state that the person may choose not to pay the penalty and notify them that, if they do so, proceedings seeking a civil penalty order may be brought against them in a court. Accordingly, the person must always be advised of the consequences of not paying the penalty, and of their right to have the matter dealt with by a court. As the person may elect to have the matter heard by a court, rather than pay the penalty, the right to a fair hearing provided for by Article 14(1) of the ICCPR is not limited in relation to civil matters.

Where the infringement notice relates to a strict liability offence, if the person chooses not to pay the penalty amount in the infringement notice, they may be prosecuted for the offence. The right to a fair and public hearing provided for by Article 14(1) of the ICCPR is consequently engaged.

Section 104 of the Regulatory Powers Act provides that an infringement notice is required to state that the person may choose not to pay the penalty, and notify them that, if they do so, that person may be prosecuted in a court for the alleged offence. As the person may elect to have the matter heard by a court, rather than pay the penalty, the right to a fair and public hearing by a competent, independent and impartial tribunal is not limited.

Article 14 of the ICCPR also provides for other criminal process rights, such as the right to be presumed innocent. It sets out the minimum guarantees in criminal proceedings, such as the right to be informed promptly of the charge, the right to freedom from self-incrimination and the right to be tried in person. These rights are not limited by the application of Part 5 of the Regulatory Powers Act to the Bill. The minimum guarantees and the right to be presumed innocent will apply to proceedings relating to contraventions of the Bill, except to the extent that they are expressly limited by law.

**Enforceable undertakings**

Clause 362 of the Bill seeks to apply the enforceable undertakings provisions in Part 6 of the Regulatory Powers Act to the provisions of the Bill. Accordingly, the enforcement framework for enforceable undertakings in relation to provisions of the Bill will be provided for by Part 6 of the Regulatory Powers Act.

Clause 362 of the Bill will enable the Secretary to accept and enforce undertakings relating to compliance with the offence and civil penalty provisions of the Bill. Further, if the Secretary is satisfied that a person has breached an undertaking, the Secretary may apply to a relevant court for an order relating to the undertaking.

Applying the enforceable undertakings provisions of the Regulatory Powers Act in relation to proposed offences in the Bill engages the right to a fair and public hearing and other criminal process rights and minimum guarantees in Article 14 of the ICCPR. Article 14(1) of the ICCPR ensures that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Under Part 6 of the Regulatory Powers Act, an order enforcing the undertaking can only be made by a court. Accordingly, the right to a fair and public hearing is not limited.
Clause 362 of the Bill does not limit the minimum guarantees and other criminal process rights in Article 14 of the ICCPR. The minimum guarantees and process rights will apply to criminal proceedings.

Article 14(1) of the ICCPR also provides a right to a fair and public hearing in civil matters. As orders to enforce an undertaking can only be made by a relevant court under section 115 of the Regulatory Powers Act, the right to a fair hearing in civil matters provided for by Article 14(1) of the ICCPR is not limited.

Accordingly, the application of Part 6 of the Regulatory Powers Act to the Bill, is compatible with human rights.

**Injunctions**

Clause 364 of the Bill seeks to apply the injunctions provisions in Part 7 of the Regulatory Powers Act to the provisions of the Bill. Accordingly, the enforcement framework for injunctions in relation to provisions of the Bill will be provided for by Part 7 of the Regulatory Powers Act.

Clause 364 will enable the Secretary to apply to a relevant court for an injunction to restrain a person from engaging in conduct or requiring that person to do a thing. Further, the Secretary may apply to a relevant court for an interim injunction. The injunctions provisions will be applied to all provisions of the Bill.

Applying the injunction provisions of the Regulatory Powers Act engages the right to a fair and public hearing and the other criminal process rights in Article 14 of the ICCPR. Under Part 7 of the Regulatory Powers Act, an injunction can only be granted by a court. Thus, the right to a fair and public hearing by a competent, independent and impartial tribunal is not limited.

Accordingly, the application of Part 7 of the Regulatory Powers Act to the Bill is compatible with human rights.

**Summary**

The Bill is compatible with the criminal process rights provided for by Article 14 of the ICCPR because, to the extent that it engages those rights, it does not limit those rights.

**Right to presumption of innocence (Article 14(2) of the ICCPR)**

Article 14 of the ICCPR provides for the presumption of innocence and sets out minimum guarantees in criminal proceedings, including, at paragraph 3(e), that a person charged with a criminal offence shall have the right to examine, or have examined, the witnesses against the person, and to obtain the attendance and examination of witnesses on the person’s behalf under the same conditions as witnesses against the person. The right to presumption of innocence is also a fundamental common law principle in Australia.

**Evidentiary certificates**

Clause 415 of the Bill provides that a certificate given under clause 414 is admissible in any proceedings in relation to a contravention of the Bill as *prima facie* evidence of the matters in the certificate and the correctness of the result of the analysis to which the certificate relates.
This engages the defendant’s right to a fair trial as the prosecution is not required to prove each piece of information contained in the certificate, unless the defendant challenges the certificate.

The objective of this clause is to ensure that all appropriate evidence is before the court. The certificate will provide information on the state of the goods and the relevant background on how the goods were tested and samples taken.

The certificate will provide information about the goods and how they were sampled. However, the information provided in the certificate will not be enough to prove culpability of the defendant beyond reasonable doubt. Allowing the certificate as *prima facie* evidence of limited matters is reasonable to free up the court’s time to consider the more pressing issues related to the offence. The use of an evidentiary certificate will likely mitigate the delays that may be faced in obtaining evidence in other ways. In this way, the use of evidentiary certificates will promote the right of the defendant to be tried without undue delay.

There are a number of safeguards built into clause 415 of the Bill that will protect the rights of the defendant. Evidentiary certificates establish *prima facie* evidence, rather than conclusive evidence, of the matters contained within it. As such, the certificates create a rebuttable presumption as to the facts which the defendant may challenge during the court proceedings.

Subclause 415(2) of the Bill provides that the defendant must be given a copy of the certificate, and notice of the intention to produce the certificate as evidence in the proceedings, at least 14 days before the certificate is admitted as evidence. This will allow time for the defendant and their legal counsel to view the certificate and prepare their case in relation to it.

Subclause 415(3) of the Bill will allow the defendant to call the analyst as a witness and cross-examine them on the certificate. This will give the defendant an opportunity to challenge the credibility of the analyst as well as the evidence in the certificate.

**Reverse burden provisions**

Laws that shift the burden of proof to a defendant, commonly known as ‘reverse burden provisions’, can be considered a limitation of the presumption of innocence. This is because a defendant’s failure to discharge a burden of proof or prove an absence of fault may permit their conviction despite reasonable doubt as to their guilt. This includes where an evidential or legal burden of proof is placed on a defendant or where strict liability is applied to an offence (see the explanation of strict liability below).

When a defendant bears an evidential burden in relation to an exception it means that the defendant bears the burden of adducing or pointing to evidence that suggests a reasonable possibility that the exception has been met. It is then up to the prosecution to establish that this exception does not apply.

Reverse burden offences will not necessarily be inconsistent with the presumption of innocence, provided that the reverse burden pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. Whether a reverse burden provision impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for the reverse burden.
The Guide notes that placing the burden of proof on the defendant should be limited to where the matter is peculiarly within the knowledge of the defendant and where it is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. The Guide to Framing Commonwealth Offences also notes that a reverse burden provision is more readily justified if:

- the matter in question is not central to the question of culpability for the offence;
- the penalties are at the lower end of the scale; and
- the conduct proscribed by the offence poses a grave danger to public health or safety.

An additional factor to consider is whether the offences only impose an evidential burden—that is, the prosecution must still disprove the matters beyond reasonable doubt if the defendant discharges the evidential burden.

The following subclauses in Chapters 4, 9 and 11 of the Bill will impose criminal offences that place an evidential burden on the defendant. As such, they may operate to limit the right to be presumed innocent:

- subclause 122(2) (Chapter 4);
- subclauses 307(2), 308(2), 308(3), 308(5) and 308(6) (Chapter 9); and
- subclause 397(2) (Chapter 11).

These proposed reverse burden provisions have been developed in line with the Guide.

Subclause 122(3) of the Bill will create a fault-based offence, subject to a penalty of imprisonment for two years or 120 penalty units (or both), if the occupier of a registered establishment makes an alteration to their establishment and either the alteration is not approved under subclause 120(2), or the alteration is approved subclause 120(2) but the Secretary has not given the occupier a notice of the approval under clause 121.

Under subclause 122(2), the offence will not apply if the defendant can demonstrate that the alteration is a kind prescribed by the rules. The defendant bears the evidential burden in relation to this issue.

This clause is necessary to achieve the legitimate objective of ensuring the integrity of Australia’s export control system. It ensures that occupiers of registered establishments carry out their export operations in accordance with the Bill and as approved by the Secretary. This allows the Government to provide assurance to its international trading partners that export operations carried out at a particular registered establishment have been carried out in accordance with the Bill and that prescribed goods for export from that establishment will meet that importing country’s requirements. It is also necessary to ensure that information provided to the Department is correct. The Department will make its assessment of whether to approve a registered establishment based on the information provided by the applicant. If the applicant then makes an alteration to that establishment, without the department’s knowledge or approval, this may compromise the integrity of the regulatory system.

Reversing the burden for the purposes of the exceptions in subclause 122(2) is reasonable because the nature of an alteration will be peculiarly within the knowledge of the occupier. The occupier will have the details of the alteration and how it will interact with the rest of the establishment and export operations conducted in it. Requiring the prosecution to provide evidence in all cases of unapproved alterations of this kind on an ongoing basis would also be prohibitively costly.
Clause 307 of the Bill will create a strict liability offence, subject to a penalty of one penalty unit, if an authorised officer, approved auditor or other person fails to return their identity card. The defendant will bear the evidential burden in relation to demonstrating that their authorisation has been suspended or that the identity card was lost or destroyed.

This clause is necessary to achieve the legitimate objective of preventing the fraudulent or unauthorised use of identity cards. A number of clauses in the Bill will require a person to produce an identity card in order to exercise a power. These include the audit functions in Part 2 of Chapter 9, and a number of monitoring and investigation powers in Chapter 10.

Reversing the burden in these circumstances is reasonable because the defendant will have the information or knowledge available to them, which would form evidence to support the application of the exception. Whether or not a person has had their authorisation suspended, or lost or had their identity card stolen, will be something peculiarly within the knowledge of that person. Requiring the prosecution to provide evidence in all cases of a failure to return an identity card that the card was not lost or destroyed would also be prohibitively costly.

Subclauses 308(1) and (4) of the Bill will create fault-based offences, subject to a penalty of imprisonment for 12 months or 60 penalty units (or both), if the occupier of a registered establishment provides goods or services to an authorised officer, or the officer receives goods or services from an occupier. Under subclauses 308(2), (3), (5) and (6), the offence will not apply if the defendant can demonstrate that the Secretary has approved, in writing, the provision of the goods and services to the authorised officer (subclause 308(2) and (5)), or if the goods or services are provided to a third party authorised officer under a contract of employment or a contract for services (subclause 308(3) and (6)).

These clauses are necessary to achieve the legitimate objective of ensuring the independence of authorised officers from the persons, including individuals and bodies corporate, whose export-related activities they are appointed to assist in regulating by the Australian Government. Australia’s international trade partnerships are underpinned by trust, and ensuring that regulators have independence from industry players is an important way of decreasing the risks of conflicts of interest or corruption, thereby allowing importing countries to have trust and assurance in Australia’s capacity to regulate its agricultural export industries appropriately.

Reversing the burden in these circumstances is reasonable because the defendant will have the relevant information or knowledge available to them, which would form evidence to support the application of the exception. The defendant will have the Secretary’s written approval (for subclause 308(2) or (5)), or the relevant contract of employment or contract for services (for subclause 308(3) or (6)). Requiring the prosecution to provide evidence in all cases that the Secretary had authorised the provision of a good or service, or that it was provided pursuant to a contract of employment or contract for services would also be prohibitively costly.

Clause 397 of the Bill will create a fault-based offence, subject to a penalty of imprisonment for two years or 120 penalty units (or both), if a person uses or discloses protected information without authorisation. The defendant will bear the evidential burden of demonstrating the use or disclosure was in good faith and in purported compliance with the Bill.
The offence in clause 397 is necessary to ensure that protected information is only used or disclosed in circumstances authorised under the Bill. It will also ensure the right to privacy for individuals who provide information under the Bill.

Reversing the burden in these circumstances is reasonable because the defendant will have the information or knowledge available to them, which would form evidence to support the application of the exception. It will be significantly more difficult and costly for the prosecution to provide evidence that the defendant acted in good faith and in purported compliance with the provisions of the Bill. These are matters that will be peculiarly within the knowledge of the defendant, as only that person will know the reasons why they used or disclosed that information, and what they believed the authorisation for that use or disclosure to be at the time they engaged in that conduct.

**Strict liability offences**

Section 5.6 of the *Criminal Code* creates a rebuttable presumption that, to establish guilt, fault must be proven for each physical element of a Commonwealth offence. If it is proposed that no fault element apply to the offence or an element of the offence, the offence or element must be expressly identified as one of strict liability (section 6.1 of the *Criminal Code*) or absolute liability (section 6.2 of the *Criminal Code*).

When strict liability applies to an offence or an element of an offence, the prosecution is only required to prove the physical elements of the offence (or element of the offence) in order for the defendant to be found guilty. That is, they are not required to prove fault elements in order for the defendant to be found guilty.

Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations. Strict liability offences can be considered a limitation of the presumption of innocence because the defendant can be found guilty without the prosecution being required to prove fault. It is important to note that the defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*).

Strict liability offences will not necessarily be inconsistent with the presumption of innocence, provided that the removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. The strict liability elements in the Bill are appropriate because persons voluntarily engaged in the export of goods should know their legal obligations before commencing export operations. Ultimately, whether a strict liability provision impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for an offence being a strict liability offence.

The application of strict liability in the Bill, and the offences to which it relates, have been developed in line with the Guide.

*Applying strict liability to elements of a fault-based offence*

The Guide states that applying strict liability to a particular physical element of an offence may be justified where one of the following applies:
• requiring proof of fault of the particular element to which strict liability applies would undermine deterrence, and there are legitimate grounds for penalising persons lacking ‘fault’ in respect of that element; or
• the element is a jurisdictional element (linking the offence to the legislative power of the Commonwealth) rather than one going to the essence of the offence.

The Bill will apply strict liability elements to offences in the following subclauses:

• subclauses 30(1)(b), 31(1)(b), 32(1)(b), 33(1)(c), 33(5)(c), 34(1)(c), 35(1)(c), 36(1)(c), 37(1)(c), 37(5)(c), 38(1)(b), 38(1)(c), 38(1)(d), 39(1)(b), 39(1)(c), 39(1)(d), 40(1)(b), 40(1)(c), 40(1)(d), 42(1)(b), 42(1)(d), 42(1)(e), 43(1)(b), 43(1)(d), 43(1)(e), 44(1)(b), 44(1)(d), 44(1)(e) 46(1)(c), 46(1)(e), 46(1)(f), 46(1)(g), 47(1)(c), 47(1)(e), 47(1)(f), 47(1)(g), 48(1)(b), 48(1)(c), 49(1)(b), 49(1)(d), and 50(1)(b) (Chapter 2);
• subclauses 184(1)(c), 184(5)(c) and 184(5)(d) (Chapter 5);
• subclause 217(1)(c), 217(5)(c) and 217(5)(d) (Chapter 6);
• subclauses 252(1)(b), 252(4)(b), 253(1)(b), 251(1)(b), 252(1)(b), 253(1)(b) (Chapter 8); and
• subclause 315(2) (Chapter 9).

The elements of these offences (excluding 315(2)) are matters of law. It is appropriate for these elements to be strict liability because persons voluntarily engaged in the export of goods should know their legal obligations before commencing export operations. If the prosecution was required to prove fault in relation to these elements, it would undermine deterrence by requiring proof that persons who export goods knew the law. Making these elements strict liability builds on section 9.4 of the Criminal Code to put beyond doubt that ignorance of the law is not a ground on which a person may escape liability.

Subclause 315(2) will provide that strict liability will apply to paragraphs (a) and (c) of subclause 315(1). This means that a person will be able to be found guilty of the offence if the prosecution can prove that:

• the person was a veterinarian who carried out export operations in an approved export program (paragraph 315(1)(a)), but was not an accredited veterinarian or an authorised officer who had been directed under subsection 313(1) of the Bill to carry out the export operations (paragraph 315(1)(c)), without needing to prove fault; and
• the veterinarian was reckless as to whether the export operations were in an approved export program (paragraph 315(1)(b)).

The defence of honest and reasonable mistake of fact under section 9.2 of the Criminal Code will be available to veterinarians accused of contravening subclause 315(1) if, at or before the time of the conduct constituting the physical elements in paragraphs 315(1)(a) and (c), the veterinarian had considered whether or not facts existed, and was under a mistaken but reasonable belief about those facts.

Removing the requirement to prove fault in paragraphs 315(1)(a) and (c) of the Bill will encourage veterinarians involved in the export system to ensure that they are following and implementing all regulatory procedures and safeguards, including obtaining appropriate accreditation or receiving a direction under subclause 313(1) of the Bill. Strict liability in this situation provides a strong deterrent against behaviour that is not in accordance with the regulatory system set up by the Bill, and veterinarians are likely to be placed on notice to guard against the possibility of any contravention of the Bill.
It is also important to note that, while subclause 315(2) applies strict liability to elements of a fault-based offence, the offence is punishable by a financial penalty only, not imprisonment. This is in accordance with the Guide, which provides that applying strict liability to an offence is generally only considered appropriate where the offence is not punishable by imprisonment.

**Strict liability offences**

The following clauses of the Bill seek to create strict liability offences, in which strict liability is applied to all elements of the offence:

- subclauses 46(4) and 47(4) (Chapter 2);
- subclause 307(3) and clauses 316, 317 and 319 and subclauses 320(3) and 321(2) (Chapter 9); and
- subclause 408(3) (Chapter 11).

The Guide states that applying strict liability to all physical elements is generally only considered appropriate where all of the following apply:

- the offence is not punishable by imprisonment;
- the offence is punishable by a fine of up to 60 penalty units for an individual and 300 penalty units for a body corporate;
- the punishment of offences not involving fault is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct;
- there are legitimate grounds for penalising persons lacking fault (for example, because he or she will be placed on notice to guard against the possibility of any contravention).

The proposed strict liability offences in subclauses 46(4) and 47(3) of the Bill will relate to the production or preparation of prescribed goods or other goods at certain premises, including registered establishments and accredited properties, in circumstances where the export of those goods is prohibited unless certain export conditions are complied with. Strict liability will be necessary to ensure the effectiveness and enforceability of the regulatory system in regulating export operations that contravene export conditions.

Removing the requirement to prove fault in subclauses 46(4) and 47(3) of the Bill will provide a strong deterrent to people seeking to engage in export-related activities in contravention of the Bill. The existence of the offences is likely to place relevant persons involved in export operations on notice to guard against the possibility of any contravention of the Bill.

The proposed strict liability offences are not punishable by imprisonment, and are not punishable by criminal penalties exceeding 60 penalty units for an individual or 300 penalty units for a body corporate. Subclauses 46(4) and 47(3) of the Bill will each be subject to a criminal pecuniary penalty of 60 penalty units for an individual and 300 penalty units for a body corporate.

Subclause 307(3) of the Bill will create a strict liability offence, subject to a penalty of one penalty unit, if an authorised officer, approved auditor or other person fails to return their identity card. Importantly, it will be open to a person to demonstrate that their authorisation has been suspended (if they are an authorised officer) or that their identity card was lost or destroyed. This offence is necessary to achieve the legitimate objective of preventing the
fraudulent or unauthorised use of identity cards. A number of clauses in the Bill will require a person to produce an identity card in order to exercise a power. These include the audit functions in Part 2 of Chapter 9, and a number of monitoring and investigation powers in Chapter 10. Removing the requirement to prove fault will provide a strong deterrent to authorised officers, approved auditors and others to retain their identity cards after they cease performing functions or duties under the Bill.

The proposed strict liability offence is not punishable by imprisonment. With a criminal penalty of one penalty unit, it is also not punishable by criminal penalties exceeding 60 penalty units for an individual or 300 penalty units for a body corporate. This makes it appropriate to be subject to strict liability.

The proposed strict liability offences in clauses 316, 317, 319 and subclauses 320(3) 321(2) of the Bill will relate to accredited veterinarians and approved export programs. Strict liability will be necessary to ensure the integrity of the regulatory system as it will relate to accredited veterinarians. It also pursues the legitimate objective of protecting animal health and welfare. The accredited veterinarian scheme will seek to ensure animal health, as the Department will rely on the reports veterinarians provide to certify that an exporter has complied with requirements relating to live animals. Removing the requirement to prove fault in clauses 316, 317, 319 and subclauses 320(3) and 321(2) of the Bill will provide a strong deterrent, and accredited veterinarians, exporters working in the live export trade, and authorised officers are likely to be placed on notice to guard against the possibility of any contravention of the Bill.

Applying strict liability to the proposed offences in clauses 316, 317, 319 and subclauses 320(3) and 321(2) of the Bill is a reasonable means of ensuring that animal welfare requirements are complied with. The proposed strict liability offences are not punishable by imprisonment, and are not punishable by criminal penalties exceeding 60 penalty units for an individual or 300 penalty units for a body corporate. Clauses 316, 317, 319 and subclauses 320(3) and 321(2) of the Bill will each be subject to a criminal pecuniary penalty of 50 penalty units for an individual and 250 penalty units for a body corporate.

The defence of honest and reasonable mistake of fact under section 9.2 of the Criminal Code will be available to a veterinarian accused of contravening clauses 316, 317, 319 and subclauses 320(3) and 321(2) of the Bill if, at or before the time of the conduct constituting the physical elements in those clauses, the veterinarian had considered whether or not facts existed, and was under a mistaken but reasonable belief about those facts.

The proposed strict liability offence in subclause 408(3) of the Bill will relate to the requirements for certain persons to retain records relating to their operations or activities. The Secretary will make rules under clause 432 of the Bill setting out the circumstances in which these persons are required to retain records. Strict liability will be necessary to ensure that persons involved in the export system, as regulated by the Bill, keep proper records of their activities, to enable effective enforcement of the Bill. Removing the requirement to prove fault in subclause 408(3) of the Bill will provide a strong incentive for persons involved in export operations and activities to keep records. The existence of the offence is likely to place relevant persons on notice to guard against the possibility of any contravention of the Bill.

Applying strict liability to the proposed offence in subclause 408(3) of the Bill is a reasonable means of ensuring that relevant persons keep records as required under the Bill. The proposed strict liability offence is not punishable by imprisonment, and is not punishable by criminal penalties exceeding 60 penalty units for an individual or 300 penalty units for a body
corporate. Subclause 408(3) of the Bill will be subject to a criminal pecuniary penalty of 20 penalty units for an individual and 100 penalty units for a body corporate.

Summary

The Bill is compatible with the right to the presumption of innocence in Article 14(2) of the ICCPR because, to the extent that it may limit that right, that limitation is reasonable, necessary and proportionate to the achievement of a legitimate objective.

Right to be free from self-incrimination (Article 14(3) of the ICCPR)

Article 14(3)(g) of the ICCPR protects the right of an individual to be free from self-incrimination in the determination of a criminal charge by providing that a person may not be compelled to testify against themselves or confess guilt. The common law of Australia also recognises the privilege against self-incrimination which applies unless expressly or impliedly overridden by statute. The privilege against self-incrimination may be subject to permissible limits. Any limitations must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

The Bill operates to limit the right to be free from self-incrimination by expressly removing the privilege against self-incrimination in the following proposed information gathering clauses of the Bill (see clause 426):

- clauses 66, 74, 107, 145, 185, 218, 235, 240, 244, 298B and 378 (requirement to give additional or corrected information);
- clauses 54, 67, 68, 241 and 285 (requirement to give the Secretary information or documents).

However, in the case of an individual, none of the following will be admissible in evidence against the individual in any criminal or civil proceedings (other than proceedings for an offence against clause 367, 368 or 369 of the Bill or proceedings for an offence against section 136.1, 137.1 or 137.2 of the Criminal Code) in relation to answering a question, providing information or producing a document:

- the answer given, the information provided or the document produced; and
- answering the question, providing the information or producing the document; and
- any information, document or thing obtained as a direct or indirect consequence of the answering of the question, the provision of the information or the production of the document.

Australia’s agricultural export industries are based on trust. Removing the privilege against self-incrimination in these circumstances is necessary to achieve the legitimate objective of ensuring that goods that are exported meet the requirements of the Bill and importing country requirements. Abrogating the privilege against self-incrimination in these provisions ensures that the Secretary will have all the relevant information in relation to a person’s export operations or goods that are to be exported, and that the information is correct. The Department will rely on the information provided to be complete and accurate in order to effectively assess applications and determine compliance with the Bill.

Upholding the privilege against self-incrimination in relation to individuals who have information regarding a potential breach of the requirements imposed under the Bill or of importing country requirements could have significant consequences. For example, food not
fit for human consumption maybe exported and this could potentially impact the health of persons in the importing country. Export of goods not fit for human consumption (where it is a requirement that they are) has the potential to cause significant and long-term damage to Australian industries as well as to the reputation of Australia as a reliable producer of quality food. If one person does not comply with their obligations under the Bill, and the goods they export are rejected by the importing country, this may result in all Australian exports of that type of goods to that country being blocked. The actions of one person may affect all other exporting participants.

It is not feasible to obtain information by other means (for example, warrants) in these circumstances, due to the volume of goods exported from Australian territory. Without the proposed abrogation of the privilege against self-incrimination, the Commonwealth’s ability to manage risks associated with the production, preparation or export of goods for which it is either actively considering an application or has issued a permit or other approval, through a responsive, evidence-led approach will be significantly reduced. Removal of the privilege against self-incrimination will ensure that the assessment of risk and application of response measures can occur as urgently as necessary, and reflects the magnitude of the potential impacts risks pose to Australian trade.

Clause 426 of the Bill will restrict the abrogation of the privilege against self-incrimination and protect an individual from incriminating themselves in a way that would allow evidence to be used against the individual in criminal proceedings (other than proceedings for an offence against clause 367, 368 or 369 of the Bill or proceedings for an offence against section 136.1, 137.1 or 137.2 of the Criminal Code). Accordingly, self-incriminatory disclosures will not be able to be used against the person who made the disclosure either directly in court (use immunity) or indirectly to gather other evidence against the person (derivative use immunity).

Finally, the usual criminal process rights and minimum guarantees that apply in criminal proceedings will apply to any criminal proceedings under the Act, including the right to a fair and public hearing and appeal rights to a higher court. Accordingly, the provisions are compatible with the criminal process rights in Article 14 of the ICCPR.

Summary

The Bill is compatible with the right to be free from self-incrimination under Article 14(3)(g) of the ICCPR because, to the extent that it may limit that right, that limitation is reasonable, necessary and proportionate to the achievement of a legitimate objective.

Right to protection from arbitrary interference with privacy (Article 17 of the ICCPR)

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence, and protects a person’s honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined “privacy”, the term is generally understood to comprise freedom from unwarranted and
unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

**Monitoring and investigation powers**

Clauses 326 and 329 of the Bill will apply the standard provisions in Parts 2 and 3 of the Regulatory Powers Act for the use of monitoring and investigation powers in relation to the offence and civil penalty provisions of the Bill. Accordingly, the monitoring and investigation framework for the Bill will be provided for by Parts 2 and 3 of the Regulatory Powers Act. To the extent that the measures in clauses 326 to 329 of the Bill limit the rights protected under Article 17 of the ICCPR, these limitations are not arbitrary, and are reasonable, necessary and proportionate to the achievement of a legitimate objective.

The Bill pursues the legitimate objective of setting up a regulatory framework that ensures that goods exported from Australia meet importing country requirements, comply with government or industry standards relating to the goods, and are traceable, thereby ensuring the integrity of goods and giving effect to Australia’s rights and obligations under international agreements to which Australia is a party. Applying the standard provisions in Parts 2 and 3 of the Regulatory Powers Act to the Bill will ensure that the Australian Government, and authorised officers who perform functions or exercise powers on behalf of the Australian Government, will have the ability to ensure the integrity of the export system and of any goods that are exported. These powers are necessary to ensure that these officers can monitor the integrity of the regulatory system set up by the Bill, assess compliance with that system and investigate any potential non-compliance.

It is important to note that the monitoring and investigation powers under the Bill will enable authorised officers to obtain information and knowledge relating to the compliance of commercial export operations with the requirements of the Bill and importing countries. The information that will be able to be obtained under the monitoring and investigation provisions will allow the Australian Government to ensure the export system set up by the Bill, which is voluntarily entered into by commercial parties, can ensure that the integrity and traceability of goods that are exported can be ensured, and that the goods meet importing country requirements and government or industry standards.

The entry, monitoring, search, seizure and information gathering powers in the standard provisions of the Regulatory Powers Act are provided for by law. The monitoring and investigation powers are necessary to enable the monitoring of compliance with the Bill and the collection of evidential material relating to contraventions. They are constrained in various ways as set out below, ensuring that their use is not arbitrary.

The regime under the Regulatory Powers Act protects against arbitrary interference with privacy, as, except in limited circumstances, the monitoring and investigation powers cannot be exercised without consent being given to the entry into the premises, or prior judicial authorisation in the form of a warrant. Where entry is based on the consent of the occupier, consent must be informed and voluntary, and the occupier of premises can restrict entry by authorised persons to a particular period. Additional safeguards are provided through provisions requiring authorised persons, and any persons assisting them, to leave the premises if the occupier withdraws their consent.

Entry to premises without consent or a warrant will only be provided for in the specific circumstances as set out in clauses 346 and 347. These include:
- entering registered establishments or accredited properties for the purposes of determining whether the Bill has been, or is being, complied with, or whether information provided for the purposes of the Bill is correct (subclause 346(1));
- entering registered establishments or accredited properties when the authorised officer has reasonable grounds for suspecting there may be a particular thing on the premises which is related to the contravention of an offence provision or a civil penalty provision (subclause 347(1)).

The powers of authorised officers to enter registered establishments or accredited properties without consent or a warrant are justifiable and reasonable to ensure compliance with the Bill. These premises are commercial premises, and their occupiers and managers will have voluntarily entered into the regulatory system. This is consistent with other provisions in Commonwealth legislation that involves licensed premises (for example, the Therapeutic Goods Act 1989 and Gene Technology Act 2000). Further, occupiers and managers will be responsible for export operations conducted at their premises. If those operations contravene the requirements of the Bill, it may result in the export of goods that do not meet Australian standards or importing country requirements and undermine the integrity of the regulatory framework provided for by the Bill. This may impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access for all. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

There are limits on the ability of authorised officers to enter accredited properties and registered establishments. Entry to premises without consent or a warrant will only be permissible during business hours (subclause 346(2)), after announcement of the entry and explanation of the reasons for entry is given (clause 348), and only for the legitimate purpose of determining whether the Bill is being complied with.

Clause 353 of the Bill will give authorised officers who have entered premises under Part 2 of the Regulatory Powers Act (as that Part will apply to the Bill) and under clause 346 of the Bill the power to secure evidentiary material without consent or a warrant, pending the obtaining of an investigation warrant to seize it. The authorised officer will need to reasonably suspect that there is particular evidential material in or on the premises, that it is necessary to secure the material to prevent it from being concealed, lost or destroyed, and that it is necessary to secure the material without the authority of an investigation warrant because the circumstances are serious and urgent.

Similarly, clause 354 of the Bill will give authorised officers the power, without consent or a warrant, to stop and detain a conveyance, search the conveyance and anything in or on the conveyance for evidential material, and secure the evidential material if he or she finds it there, pending the obtaining of an investigation warrant to seize it. The authorised officer will need to reasonably suspect that particular evidential material is in or on the conveyance, that it is necessary to stop and detain the conveyance and secure the material to prevent it from being concealed, lost or destroyed, and that it is necessary to exercise this power without the authority of an investigation warrant because the circumstances are serious and urgent. If the authorised officer finds other evidential material on the conveyance, subclause 354(3) will give the authorised officer the power also to secure that other evidential material pending the obtaining of an investigation warrant to seize it.

The powers under clauses 353 and 354 of the Bill are necessary to ensure effective enforcement of the Bill in serious or urgent situations where evidential material is about to be
concealed, lost or destroyed, and there is insufficient time to follow the usual procedures regarding the obtaining of warrants. They are only able to be exercised in the limited circumstances outlined in clauses 353 and 354, which provide constraints against the arbitrary use of the powers. These constraints ensure the powers are reasonable, necessary and proportionate to the objectives of the Bill.

The Regulatory Powers Act also provides restrictions on the issuing of a monitoring or investigation warrant. For example, in the case of an investigation warrant, an issuing officer may issue an investigation warrant only when satisfied, by oath or affirmation, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, evidential material on the premises. An issuing officer must not issue a warrant unless the issuing officer has been provided, either orally or by affidavit, with such further information as they require concerning the grounds on which the issue of the warrant is being sought. Such constraints on this power ensure adequate safeguards against arbitrary limitations on the right to privacy in the issuing of warrants.

In addition, an authorised person cannot enter premises under a warrant unless their identity card is shown to the occupier of the premises. If entry is authorised by warrant, the authorised person must also provide a copy of the warrant to the occupier of the premises. This provides for the transparent utilisation of the powers and mitigates arbitrariness and risk of abuse.

The monitoring and investigation powers may only be exercised in certain circumstances set out in the Regulatory Powers Act. For example, under section 52 of the Regulatory Powers Act, the power to seize evidence of a kind not specified in an investigation warrant may only be exercised where:

- the authorised person finds the thing in the course of searching for material of the kind specified in an investigation warrant; and
- the authorised person believes on reasonable grounds that:
  - the thing is evidential material of another kind; or
  - a related provision has been contravened with respect to the thing; or
  - the thing is evidence of a contravention of a related provision; or
  - the thing is intended to be used to contravene a related provision; and
- the authorised person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its loss, concealment or destruction.

These constraints on the exercise of the powers limit their susceptibility to arbitrary use or abuse and ensure that their use is reasonable and proportionate in the circumstances. Accordingly, the monitoring and investigation powers are necessary, proportionate and reasonable in the pursuance of the legitimate objectives of the Bill.

Paragraph 327(2)(a) and subclause 330(2) of the Bill will modify the operation of Parts 2 and 3 of the Regulatory Powers Act to provide an authorised officer with the power to take, test and analyse samples of any thing on premises entered under section 18 or 48 of the Regulatory Powers Act for the purposes of exercising monitoring or investigation powers. This modification is necessary to allow an authorised officer to assess compliance with the Bill.

The power to sample any thing on any premises entered under section 18 or 48 of the Regulatory Powers Act for the purposes of exercising monitoring or investigation powers may not be exercised without a monitoring or investigation warrant or the occupier’s consent to
enter the premises. Accordingly, the exercise of the power is constrained, and these constraints ensure its use is reasonable, necessary and proportionate to the objectives of the Bill.

Part 4 of Division 10 of the Bill will provide for the ability of authorised officers to enter premises (adjacent premises) adjacent to those on which they are to perform functions or duties, or exercise powers, as an authorised officer (including for the purposes of Part 2 or 3 of the Regulatory Powers Act).

To the extent that the measures in Part 4 of Division 10 of the Bill limit the rights protected under Article 17 of the ICCPR, these limitations are not arbitrary, and are reasonable, necessary and proportionate to the achievement of a legitimate objective.

The Bill pursues the legitimate objective of setting up a regulatory framework that ensures that goods exported from Australia meet importing country requirements, comply with government or industry standards relating to the goods, and are traceable, thereby ensuring the integrity of goods and giving effect to Australia’s rights and obligations under international agreements to which Australia is a party. Allowing authorised officers to access adjacent premises for the purposes of accessing other premises on which they will perform functions or duties, or exercise powers, as an authorised officer will ensure that the Australian Government, and authorised officers who perform functions or exercise powers on behalf of the Australian Government, can ensure the integrity of the export system and of any goods that are exported. These powers are necessary to ensure that these officers can access premises that may only be accessed through other premises, in order to monitor the integrity of the regulatory system set up by the Bill, assess compliance with the regulatory system and investigate any potential non-compliance.

The power to enter adjacent premises is provided for by law. The ability is necessary to enable authorised officers to access other premises to, amongst other things, monitor compliance with the Bill and collect evidential material relating to contraventions. This power is constrained in various ways as set out below, ensuring that its use is not arbitrary.

The regime under Part 4 of Chapter 10 protects against arbitrary interference with privacy. Under clause 333, an authorised officer cannot exercise the power to enter adjacent premises without consent being given to the entry into the premises, or prior judicial authorisation in the form of a warrant. Where entry is based on the consent of the occupier, consent must be informed and voluntary, and the occupier of premises can restrict entry by authorised persons to a particular period (see clause 336). Additional safeguards are provided through provisions requiring authorised persons, and any persons assisting them, to leave the premises if the occupier withdraws their consent. The authorised officer must show their identity card if the occupier requires (paragraph 333(2)(a)), and must take all reasonable steps to minimise inconvenience to the occupier of those premises (clause 334).

Part 4 of Chapter 10 of the Bill will also provide restrictions on the issuing of an adjacent premises warrant. Under clause 335, an issuing officer may issue an adjacent premises warrant only when satisfied, by oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the adjacent premises for the purpose of gaining access to other premises to perform functions or duties, or exercise powers for the purposes of monitoring or investigating compliance with the Bill. Such constraints on this power ensure adequate safeguards against arbitrary limitations on the right to privacy in the issuing of warrants.
In addition, an authorised person will cannot enter adjacent premises under a warrant unless their identity card is shown to the occupier of the premises (clause 337). If entry is authorised by warrant, the authorised person must also provide a copy of the warrant to the occupier of the premises. This provides for the transparent use of the powers and mitigates arbitrariness and risk of abuse.

These constraints on the exercise of the power to enter adjacent premises limit its susceptibility to arbitrary use or abuse and ensure that its use is reasonable and proportionate in the circumstances. Accordingly, the power to enter adjacent premises is necessary, proportionate and reasonable to achieve the legitimate objectives of the Bill.

**Provision of information**

Chapters 2, 3, 4, 5, 6, 7, 8, 9 and 11 of the Bill seek to provide for clauses that will:

- require a person to provide information in an application (clauses 53, 65, 239, 243 and 377);
- require a person to provide additional or corrected information in relation to their application (clauses 66, 74, 107, 145, 185, 218, 235, 240, 244 and 378); and
- give the Secretary the power to require information or documents (clauses 54, 67, 68, 233, 241 and 285).

By requiring persons to provide information or documents, the Bill may incidentally require the provision of personal information. The collection, use, storage and sharing of personal information may therefore operate to limit the right to privacy.

These clauses are necessary for the legitimate objective of assessing the suitability of a person to participate in export operations in relation to goods that are to be exported from Australian territory and to ensure those persons are continuing to comply with the Bill. The Secretary will need access to this information in order to properly assess whether someone’s property should be registered or accredited, whether their approved arrangement is suitable, or whether they should be given an export licence or permit. They will also need ongoing and up-to-date information once a person is approved, to ensure a person is complying with the Bill and importing country requirements.

A person who provides information in an application will ‘opt in’ to the regulatory system. Guidance from the Parliamentary Joint Committee on Human Rights indicates that whether a person has a reasonable expectation of privacy in the circumstances is relevant to the issue of determining whether or not a clause is permissible. A person who has opted into the export regulatory system should expect that a certain amount of personal information about the way their business operates will need to be provided to the Secretary in order to gain the benefits of that system.

The interference with privacy is not arbitrary in these circumstances because the information the person needs to provide will be set out in the Bill and the rules made under clause 432 of the Bill. The information a person will need to provide will be information about their business. For example, a person may need to provide maps or plans of the establishment that they want registered. A person who has opted into the regulatory system should be aware that they will have to provide this kind of information when they voluntarily decide to become involved in an export-related business.
Additionally, Part 3 of Chapter 11 of the Bill will include a range of protections relating to the collection, storage and disclosure of protected information. Clause 388 of the Bill will provide that only certain persons may collect, disclose, or use information, and that they may only do so for a permissible purpose (namely, a purpose that promotes the objects of the Bill or other relevant legislation). Clause 397 of the Bill also provides an offence for unauthorised use or disclosure of protected information.

Clause 266 of the Bill provides that the Secretary may require an audit to be conducted of export operations. Clause 272 of the Bill will set out an inclusive list of the powers of auditors. Auditors will be able to request a person to produce documents, records or things, or answer questions or provide information in writing; take samples of goods; and test or analyse samples of goods. Reflecting the largely consensual basis of an audit, an auditor will also be able to do other things necessary for the completion of the audit with the consent of the relevant person.

Australia’s agricultural export industries are industries underpinned by trust. Importing country requirements relating to agricultural goods will often relate to the preservation of public health or biosecurity. Non-compliance with those requirements, and with the requirements of the Bill more generally represents a risk to Australia’s participation in those markets, as non-compliance may have significant adverse health or biosecurity consequences elsewhere. Non-compliance may also impact the confidence of trading partners in the Government’s regulation of exported goods and adversely impact market access. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.

To ensure a robust regulatory system for exports of agricultural products, the Bill will allow the Secretary to verify whether goods are being produced, prepared and exported in accordance with the requirements of the Bill and importing countries, and that persons are undertaking activities in accordance with those requirements. The Government places a significant amount of trust in persons involved in the export supply chain and who perform functions on behalf of the Government. Given the potential consequences of abusing that trust, or of exporting goods that do not comply with the requirements of the Bill or of the importing country, it will be important for the Government to verify that persons involved in the export supply chain are undertaking their operations and activities appropriately. It is not enough to always rely on the information provided by the exporting participants. Importing countries and other participants in the system expect this additional scrutiny from the Australian Government, which plays a key role in providing assurance about the integrity of the export control system to its trading partners.

To ensure that these requirements are a proportionate and legitimate restriction of an individual’s privacy, these requirements will only apply for the purposes of determining whether a person is complying with the Bill or importing country requirements. Participants in export operations ought reasonably to be aware that they may be audited when they voluntarily make the decision to become involved in export operations.

The interference with privacy is not arbitrary in these circumstances because the powers of an auditor and how an audit should be conducted will be set out in the Bill or will otherwise operate with the consent of the person whose operations are being audited. The auditor will be required to follow the legal and policy requirements when carrying out an audit, and must show the relevant person their identity card so it is clear to the relevant person they have the authority to conduct an audit. In addition, the auditor will not be approved to carry out audits
unless they meet training and qualification requirements, determined in writing by the Secretary, and as prescribed in the rules. These safeguards will ensure that the interference with privacy is reasonable and proportionate.

The Secretary will be able to require an assessment of goods to be carried out for the purpose of deciding whether to issue a government certificate (paragraph 68(c)) or an export permit (paragraph 241(c)). Clause 280 of the Bill will set out an inclusive list of the powers of an assessor when inspecting, examining and sampling the goods. An assessor will be able to request a person to produce documents, records or things, or answer questions or provide information in writing; or take, test or analyse samples of goods. Reflecting the largely consensual basis of an assessment, an assessor will also be able to do other things necessary for the completion of the assessment with the consent of the relevant person.

An assessment of goods will be necessary to ensure that the requirements of the Bill are being complied with, that importing country requirements are being met, and that matters stated in relation to a government certificate are true and correct. An assessment will enable the Secretary to issue a permit or certificate in relation to the goods, allowing the goods to be exported from Australian territory and imported into the foreign country. As outlined above in relation to clauses 266 and 272 of the Bill, the agricultural export industry is based on trust, and it is necessary to have mechanisms in the law that ensure compliance.

To ensure a robust regulatory system for exports of agricultural products, it will be important for the Department to have the power to assess goods intended to be exported. It may not be enough to rely on the information provided by exporters. Importing countries and other participants in the system expect this additional scrutiny.

To ensure that these requirements are a proportionate and legitimate restriction of an individual’s privacy, an assessment of goods will only be able to be carried out as prescribed in the Bill or in accordance with the consent of the person whose goods are being assessed. Participants in export operations should be aware that their goods may be assessed as part of the process of ensuring that those goods meet the requirements of the Bill, importing country requirements and any other matters to be specified on a government certificate.

On this basis, to the extent that the auditing and assessment provisions in Parts 1 and 2 of Chapter 9 limit the right to privacy of individuals under article 17 of the ICCPR, this limitation is necessary, proportionate and reasonable to achieve the legitimate objectives of the Bill.

**Fit and proper person test**

Participation in Australia’s agricultural export markets is not a right; it is a privilege, granted by the Commonwealth to suitable persons. A person seeking the benefit of participation in those markets will do so in the knowledge that the existence of certain prior conduct or associations may result in the rejection of an application, or suspension, variation or revocation of a registration or other approval (if prescribed in the rules).

Clause 372 of the Bill will provide the Secretary with the ability to apply a fit and proper person test in circumstances provided for by the Bill or prescribed by the rules. Persons will be required to notify the Secretary if they have been convicted of certain specified offences, or ordered to pay a pecuniary penalty in relation to certain specified contraventions (clause 374 of the Bill). When determining whether a person is a fit and proper person, the
Secretary may consider the nature of the offences resulting in the conviction or pecuniary penalty, the interest of the industry, or industries, relating to the person’s export business and any other relevant matter. Whilst these factors, along with a person’s associates, will be taken into account by the Secretary when applying the fit and proper persons test, these matters do not, in and of themselves, may not automatically give rise to a negative finding. Rather, it will be up to the Secretary to consider whether a person is fit and proper as a result of these matters.

The test streamlines and consolidates the character tests in the current framework. This includes the fit and proper person test in the Export Control (Prescribed Goods—General) Order 2005 and the requirement of an export licence holder to be a person of integrity under the Australian Meat and Live-stock Industry Act 1997.

Australia’s access to markets and the ability to export agricultural goods depends on its trading reputation and the confidence of its trading partners. The fit and proper person test is necessary, reasonable and proportionate for the legitimate objective of ensuring that persons who are approved to export goods from Australian territory are persons that are trustworthy and demonstrate the required integrity necessary to uphold Australian law and protect our trading reputation.

The Government places a significant amount of trust in those who prepare goods for export at registered establishments and other places that they will do so in accordance with the requirements of the Bill and importing country requirements. While in some cases goods will be prepared for export at an establishment or other place with an ongoing Government presence. In other cases, the Government’s supervision takes the form of periodic and random audits.

Given the potential consequences of exporting non-compliant goods detailed above, the Government needs to be certain that the persons responsible for export operations will not abuse the trust placed in them. The requirement that occupiers of, and persons in management or control of export operations at, a registered establishment and other places be fit and proper persons is necessary to ensure that these people can receive the Government’s trust, and that they will not affect the ability for all persons to access overseas markets.

The integrity of Australia’s agricultural export framework is underpinned by appropriate regulatory controls, including who is permitted to perform certain roles within it and who should be granted with certain privileges. A fit and proper person test is necessary for the legitimate objective of ensuring that persons who are approved to export goods from Australia are persons who are trustworthy and have demonstrated the required attributes necessary to uphold Australia’s trading reputation.

A fit and proper person test can be used to consider a person or company’s history of compliance with Commonwealth legislation and then deny them approval to register an establishment, or to suspend, revoke or alter the conditions on an existing approved arrangement. This ensures that persons or companies seeking these approvals are suitable entities to be responsible for the appropriate management of relevant risks. For example, an approved arrangement may set out the ways in which an exporter will meet legislative and importing country requirements in relation to a kind of prescribed goods. It is important that such persons are considered fit and proper to be able to conduct these activities and that there is no reason to believe that the person will not operate within the scope of their approval or adhere to any conditions or requirements that are placed on it.
Business associates and others may have influence over the primary person such that they may be able to compel them to undertake illegal activities on their behalf, through inducement or other means. Putting a fit and proper person test in place will notify the Department of any associates of the primary person who may pose a risk and allow them to take action to ensure Australia’s agricultural exports are not compromised.

The associates’ test is designed to ensure that an applicant for a regulatory control under the Bill (e.g. a registered establishment) is a suitable person to be responsible for managing relevant risks, in light of the potential consequences of non-compliance. It is appropriate for associates to be included in the consideration so as to ensure that the conduct of all types of entities may be taken into account where the Secretary considers it appropriate to do so.

It is appropriate for the rules to be able to provide who can be a fit and proper person. The Bill and the rules will allow the Australian Government to respond in an appropriate and timely manner to any changes to importing country requirements or to implement any necessary policy or regulatory reforms in the future. The rules will be able to prohibit the export of certain kinds of goods (called prescribed goods) unless they meet the conditions set out in the rules. The requirements for prescribed goods must be appropriately tailored to ensure that only the necessary level of regulatory burden is imposed on exporters and this includes the imposition of the fit and proper person test which should only be imposed where it is required (e.g. as a result of an importing country requirement). The rules are a legislative instrument and therefore will be subject to Parliamentary scrutiny through the disallowance process, and sunsetting in accordance with the Legislation Act 2003.

Clause 372 of the Bill will specify that the fit and proper person test and collection of personal information in clause 374 applies for the purpose of decisions in relation to registered establishments and, if specified in the rules, approved arrangements and export licences. These are not requirements that will be placed on the general public—that is, they will only extend to persons who are voluntarily seeking to benefit from exporting agricultural goods from Australian territory. Additional provisions of the Bill applying the fit and proper persons test will be required to be specified in the rules made under clause 432 of the Bill.

Clause 372 of the Bill will provide an exhaustive list of the matters that the Secretary will be required to have regard to in determining whether a person is fit and proper (for example, whether a person has been convicted of an offence against the Biosecurity Act 2015). Additionally, Part VIIC of the Crimes Act will apply to the fit and proper person test. This will mean that, in certain circumstances, the person does not need to disclose spent convictions and will require persons who are aware of the spent convictions to disregard the convictions.

Enabling the Secretary to take into account a broad range of matters is important when considering whether a person is a fit and proper person because such a person might be involved in the export of a wide range of goods, with varying degrees of risk. The matters provided for in the Bill seek to reflect the broad range of matters in the current framework that can be taken into account by the Secretary to ensure that he or she may have regard to any relevant matter. This ensures that the integrity of the regulatory framework is not compromised by limiting conduct that can be considered in this context. As the agricultural export sector is regularly changing and evolving, this is reasonable and proportionate and ensures that the current level of market access can be maintained and possibly even increased in future.
On this basis, to the extent that the fit and proper person test in clauses 372 and 374 limit the right to privacy of individuals under article 17 of the ICCPR, this limitation is necessary, proportionate and reasonable to achieve the legitimate objectives of the Bill.

Confidentiality of information

In its General Comment No 16 (April 1988), the United Nations Human Rights Committee stated that “the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law”. That Committee further stated that “effective measures have to be taken by States to ensure that information concerning a person’s private life does not reach the hands of persons who are not authorised by law to receive, process and use it”.

Clauses 387 to 397 of the Bill will regulate the use and disclosure of personal and sensitive information collected by the Department under the Bill. Additionally, to ensure there is no arbitrary interference with an individual’s privacy, the powers and functions in the Bill will be required to be exercised in compliance with the Privacy Act 1988. That Act provides for protections on the collection, storage, use, disclosure and publication of personal information.

Clause 388 of the Bill will authorise a person who obtains protected information under the Bill to use or disclose the information in performing functions or duties or exercising powers under the Bill. Clauses 389 to 391 of the Bill will set out when protected and sensitive information can be used or disclosed for a secondary permissible purpose.

Clauses 392 to 396 of the Bill will authorise the use and disclosure of protected information in specific, narrow circumstances including for court proceedings, enforcement-related activity, to comply with another Australian law, where the person has given consent, and to the person who originally provided the information.

At common law, where a statute confers a power to obtain information for a purpose, it defines, expressly or impliedly, the purpose for which the information, once obtained, can be used or disclosed. In addition, the statute imposes upon the person who obtains information in exercise of the power a duty not to disclose the information obtained except for that purpose”. The Bill will expressly authorise the use and disclosure of information for purposes other than for which it was obtained. This is necessary, reasonable and justified for the reasons outlined below.

These authorisations will be necessary for the effective operation of the regulatory framework that will be set up by the Bill. For example, in relation to clause 388 of the Bill, information will be able to be collected in an application to register an establishment, and then disclosed to an authorised officer to perform an audit on that registered establishment. This will allow the information to be used for related functions under the Bill, and will mean that the person providing the information will not have to keep providing the information multiple times, or providing consent for each use of the information.

In the case of secondary permissible purposes, and for other defined purposes in clauses 392 to 396 of the Bill, these will be necessary for ensuring information can be shared about biosecurity hazards or public health risks. For example, if a person performing their functions under the Bill receives protected information that indicates a food safety concern, the secondary permissible purpose authorisation will allow them to share this information with a State food safety authority. Allowing information to be shared beyond the purpose for which
it was originally provided will be necessary to support a national food safety system that relies on cooperation between the Commonwealth and State and Territory bodies.

As clause 389 of the Bill will limit the persons to whom protected information can be disclosed for a secondary permissible purpose, clause 390 of the Bill will give the Secretary the discretion to expand the persons to whom a disclosure can be made. This is necessary for certain cases, such as animal welfare, where disclosure to an accredited veterinarian may be required.

In relation to clause 391 of the Bill, the sensitive information being received is for the fit and proper person test, and will relate to a person’s criminal history and any pecuniary penalties they have been ordered to pay. It is necessary for the Secretary to have the power to authorise disclosure to ensure consistency in the department’s regulation of persons who are involved in export and import activities. If the Department receives sensitive information about a person in relation to their export activities, it will be necessary that officers involved in assessing the same person’s import activities should be able to use that information.

Clauses 395 and 396 of the Bill allow information to be given to the person to whom it relates, or to the person who originally provided the information.

A person who provides information in an application will have ‘opted in’ to the regulatory system. Guidance from the Parliamentary Joint Committee on Human Rights indicates that whether a person has a reasonable expectation of privacy in the circumstances is relevant to the issue of determining whether or not a clause is permissible. A person who has opted into the export regulatory system ought reasonably to expect that a certain amount of personal information about the way their business operates will need to be provided to the Department in order to gain the benefits of that system. It will also be easier for that person to be able to provide that information once, rather than having to provide the same information multiple times.

Use and disclosure of protected information under the above clauses will only be authorised in certain circumstances and to a restricted group of people. Disclosure to the general public or a broad audience will not be permitted, and may lead to prosecution through clause 391 of the Bill. The limited circumstances in which the protected information will be able to be used or disclosed reflects the sensitive nature of this information.

Use and disclosure for a secondary permissible purpose will be discretionary. The Secretary will be able to authorise use or disclosure of protected information or sensitive information on a case-by-case basis. There will be no requirement to authorise. This will provide the Secretary with an opportunity to take into account any privacy concerns when making a decision on authorisation. Additionally, the Secretary’s authorisation will need to be in writing, so this will make it very clear to the person authorised what they can disclose and to whom. It will also document the decision for later scrutiny.

Clauses 392 to 395 of the Bill have been developed to be in accordance with Australian Privacy Principle 6 in the Privacy Act 1988.

Clause 397 of the Bill will support the right to privacy by creating an offence if someone uses or discloses protected information without authority. The proposed penalty of imprisonment for two years or 120 penalty units, or both, provides a significant deterrent.
Adverse Publicity Orders

Part 10A of Chapter 10 of the Bill is intended to ensure that liability can be attributed to any person who is an executive officer of a body corporate involved in a contravention of the Bill if that executive officer knew, or was reckless or negligent as to, the contravention and failed to take reasonable steps to prevent the contravention. Clause 364F of the Bill will allow either the Director of Public Prosecutions or the Secretary to apply to a relevant court, or the relevant court to order on its own initiative, an adverse publicity order with respect to a person who has been found guilty of an offence against the Bill. As such, this clause engages the human right to privacy and to protection against unlawful attacks on reputation. The human right to privacy is not impinged by this provision, as it concerns the disclosure to the public of a finding of guilt of an adult person’s conduct as a contravention of law by an open, independent judicial process.

The clauses in Part 10A of Chapter 10 of the Bill are set out in a precise manner that firstly sets out the contravention provisions (in clauses 364B and 364C), followed by provisions that define recklessness and negligence for the purpose of contravening those provisions and the clauses relating to adverse publicity orders. Consequently, the person who may be the subject of the provisions is able to clearly see where the contravention may occur and the consequences of such a contravention that would result in a finding of guilt, being an adverse publicity order.

Clause 364F is necessary to support the legitimate objectives of the Bill, which include to ensure that goods that are exported comply with government or industry standards and to ensure the integrity of goods that are exported. The ability of the court to make an adverse publicity order serves more than advertising a ‘win’ for the regulator. The purpose of such a measure is to inform the relevant markets of the outcome of the litigation, to reassure importing countries and the domestic industry that those that risk the reputation of Australian exporters are being captured by the regulatory framework. It is also important to provide exporters with an even greater understanding of the ways in which contraveners must change their conduct, and can draw public attention to a particular wrongdoing which can be an effective deterrent for an organisation that is concerned about its reputation.

The Secretary is unable to delegate the power to apply for an adverse publicity order. This reflects the serious nature of this power, and provides a further safeguard to prevent the power being used in a disproportionate and arbitrary way.

The clause has a rational connection with, and is proportionate to, the legitimate objectives sought by the Bill, as an adverse publicity order can only be made in relation to a confined class of persons and at the court’s discretion. Summary

The Bill is compatible with the right to protection from arbitrary interference with privacy under Article 17 of the ICCPR because, to the extent that it may limit that right, that limitation is reasonable, necessary and proportionate to the achievement of a legitimate objective.

Right to freedom of association (Article 22 of the ICCPR)

Article 22 of the ICCPR protects the right of individuals to freely associate with others. It also states that the only permissible limitations to this right are those “which are prescribed by law and which are necessary in a democratic society in the interests of national security or public
safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”. In all cases, restrictions must be provided for by legislation (or imposed in conformity with legislation), must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based.

Chapters 4, 5, 6 and 10 of the Bill contain provisions that, together, may be interpreted as engaging and limiting this right as a result of the ‘fit and proper person’ test, which incorporates an assessment of a person’s associates. For the purposes of Chapter 5 or 6 of the Bill, the Secretary will be able to prescribe, in the rules made under clause 432, who is required to be a fit and proper person (clauses 151, 191 and 373).

Where a decision under the Bill will require the Secretary to consider if a primary person is fit and proper, clause 372 of the Bill prescribes certain matters that must be taken into account, along with other matters the Secretary may consider. The Bill will apply the fit and proper person considerations to decisions relating to export licences, registered establishments and approved arrangements.

When the Secretary is determining if a person is fit and proper, he or she will be required to consider if associates of that person are fit and proper. The operation of this requirement may operate as a disincentive to, and disadvantage for, primary persons who associate, or have associated with, other persons who may not be fit and proper.

To register or renew the registration of an establishment under Chapter 4 of the Bill, the Secretary will required to be satisfied that the occupier of the establishment, applicant for the export licence, and any other person in a position of management or control of relevant export operations are fit and proper persons (clause 112).

While these provisions could be seen to operate upon the associations a relevant person may have, they will not prevent or prohibit that person from holding any particular association. Participation in the export of agricultural goods is voluntary. However, holding certain associations may mean that a person’s circumstances are not compatible with participation in Australia’s agricultural export markets.

Australia’s agricultural export industries are industries underpinned by trust. Importing country requirements relating to agricultural goods will often relate to the preservation of public health, with non-compliance representing a risk to Australia’s participation in those markets. Australia’s export certification system will ensure that exporting participants are meeting any obligations imposed by importing countries. Consideration of a person’s associations is necessary, because associates may leverage their personal relationship with the primary person to engage in non-compliant export activities. This may pose a risk to public health and public safety, and so it is relevant to ensuring the right to public health is protected.

Participation in Australia’s agricultural export markets is not a right; it is a privilege, granted by the Commonwealth to suitable persons. A person seeking the benefit of participation in those markets will do so in the knowledge that the existence of certain associations may result in the rejection of an application, or suspension, variation or revocation of a licence, arrangement or accreditation.

Business associates and others may have influence over the primary person such that they may be able to compel them to undertake illegal activities on their behalf, through inducement or other means. The fit and proper person test will notify the Department of any associates of
the primary person who may pose a risk, and will enable them to take action to ensure Australia’s agricultural exports are not compromised.

When the Secretary is required to consider the fitness and propriety of an associate, that consideration will be specified as a reviewable decision under Part 2 of Chapter 11 of the Bill. The consideration will only apply to certain persons relevant to Chapters 4, 5 or 6 of the Bill. When the consideration is required, the Secretary will only need to consider associates that will be listed in clause 13 of the Bill. Once the Secretary has made a decision involving the consideration of a person’s associates, that decision will be reviewable under Part 2 of Chapter 11 of the Bill.

Summary

The Bill is compatible with the right to freedom of association under Article 22 of the ICCPR because, to the extent that it may limit that right, that limitation is reasonable, necessary and proportionate to the achievement of a legitimate objective.

Conclusion

The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. Further, in some instances, the Bill positively engages human rights.

(Circulated by authority of the Minister for Agriculture,
Senator the Hon. Bridget McKenzie)
Improvements to agricultural export legislation
Regulation impact statement
Department of Agriculture
Trade and Market Access Division, OBPR ID: 19535
Improvements to agricultural export legislation: regulation impact statement

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Export Legislation Taskforce
Trade and Market Access Division
Department of Agriculture
Postal address GPO Box 858 Canberra ACT 2601
Email: exportlegislation@agriculture.gov.au

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Summary

Agricultural exports make a valuable contribution to Australia’s economy. On average, two-thirds of Australia’s agricultural products are exported each year. The total value of Australian farm exports has been rising at an average rate of 6 per cent a year between 2008 and 2015, which is the fastest growth period in over 15 years (ABARES 2017a). In 2019–20 agricultural export earnings are forecast to be $45 billion, declining by 5% which is driven by a forecast fall in export of livestock and livestock products (ABARES 2019). The value of farm exports is expected to grow to $50 billion by 2022-23 (ABARES 2018b).

The existing legislative framework that enables agricultural exports (including fish, forestry, fibre, and food products) commenced in 1982 and provides greater control over the inspection and certification of products being exported from Australia. The current requirements for exporting agricultural goods are included in around 20 Acts and more than 40 legislative instruments.

This framework continues to serve Australia well by enabling the export of agricultural products that meet importing country requirements. However, many of the legislative instruments that give effect to the existing framework are due to sunset (cease to be law) on 1 April 2021, in accordance with the Legislation Act 2003, and must be reviewed before being either remade or repealed. The Department of Agriculture (the department) reviewed the framework through the Agricultural Export Regulation Review (the Review) in 2015 (published in 2016) with the aim of ensuring that farmers and exporters are supported by contemporary and efficient legislation, and that our trading partners continue to have confidence in Australia’s agricultural exports.

The Review found that most stakeholders accepted the current level of regulation and understood the need for it to be maintained to protect market access and Australia’s reputation. However, they also recognised that there was scope for improvement, including increasing flexibility and opportunities for government-industry cooperation, reducing complexity and duplication, and strengthening compliance and enforcement arrangements.

Based on these findings, two regulatory options were considered:

- Option one: maintain the existing regulatory arrangements
- Option two: consolidate and improve the legislative framework.

A non-regulatory option has not been explored because it does not meet the fundamental requirement for regulatory oversight from the Australian Government for agricultural export products, as required by importing countries. Removing or diminishing the Australian Government’s role in the regulation of exports poses an unacceptable risk to the export industry and would adversely impact on Australia’s economy.

On considering the findings of the Review, the Australian Government agreed to improve the legislative framework. This Regulatory Impact Statement (RIS) aims to analyse the regulatory impact of consolidating the legislative provisions. It will highlight the qualitative changes that would result in streamlining and consolidating areas of the agricultural export legislation. The improved framework is anticipated to create future opportunities to reduce the administrative burden on exporters and realise efficiencies for the government within the exporting system.
This RIS analyses the likely net benefit of the options, with a focus on the preferred option of consolidating and improving Australia’s export legislative framework. The improved framework will be underpinned by the Export Control Bill 2019 (the Bill), which is a revised version of the Export Control Bill 2017 (the 2017 Bill) which was introduced into Parliament in 2017 and lapsed with the prorogation of Parliament ahead of the 2019 Federal Election. The Bill provides the foundation for a strong legislative framework that supports the effective regulation of agricultural exports and enhances Australia’s capacity to gain, maintain and grow global market access for our exports into the future.

Similar to the existing framework, the Bill is designed to give authority to the Australian Government to continue to certify that goods for export meet importing country requirements. In doing so, the Bill continues to enable the Australian Government to ensure that the goods comply with Australian Government requirements, industry standards (if relevant) or other requirements relating to the goods. The Bill will also continue to support, and give effect to, Australia’s international obligations under the World Trade Organization’s Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

The level of regulatory oversight of agricultural exports will not change under the improved legislative framework. However, other improvements will provide a more consistent and simpler framework that is more responsive to emerging issues.

The Bill will be underpinned by the Export Control Rules (the rules). The Bill and the rules will allow the Australian Government to respond in an appropriate and timely manner to any changes in importing country requirements or to implement any necessary policy or regulatory reforms in the future.

In summary, the expected outcomes from the improved legislative framework include:

- making the requirements easier to understand, administer and use through reduction of the complexity, duplication and ambiguity of existing legislation
- continuing to achieve the regulatory outcomes that our trading partners expect
- providing for swifter Government responses to changes in market conditions
- supporting exporters and farmers to innovate and pursue lucrative export opportunities, particularly for new and emerging industries
- providing a broader range of compliance and enforcement powers that gives a further level of assurance of the integrity of our export system.

The department has identified, and is managing, key risks that could affect implementation of the improved legislative framework. The department has rolled out an extensive program of stakeholder consultation and started planning a range of implementation activities since the 2017 consultation and introduction of the 2017 Bill. The department has continued development of the transitional arrangements and other enabling legislative instruments. These will support timely implementation and operation of the improved legislative framework. A key risk to implementation of the improved legislative framework is the potential for disruption to trade as a result of concerns about Australia’s improved legislative framework. The department is working closely with internal and external stakeholders, including trading partners, to ensure a smooth transition to the new legislative framework and continuation of trade.
Introduction

Agricultural exports make a valuable contribution to Australia’s economy. Australia exports around two-thirds of its total agricultural production, putting Australia in the top 10 agricultural exporting countries in the world (WTO 2018). We have over 100 destinations for our agricultural exports (see Figure 1).

**Figure 1: Markets for Australian agriculture exports, 2016–17**

Note: Value is in 2016–17 dollars. Does not include fisheries exports. Source: ABARES (2018a)

Australian agricultural export earnings are forecast to be $45 billion in 2019-20 (ABARES 2019). The major agricultural exports expected to contribute to this total are beef and veal, wheat, wool, dairy, and wine (see Table 1). The total real value of Australian agricultural exports increased for seven consecutive years from 2008–09 to 2014–15 (ABARES 2017b). Agriculture, fishing and forestry contributed approximately three per cent of Australia’s gross domestic product in 2016–17 (ABARES 2018a). The value of farm exports is forecast to grow to $50 billion by 2022-23 (ABARES 2018b).

**Table 1: Australia’s major agricultural export commodities**

<table>
<thead>
<tr>
<th>Commodity</th>
<th>2018–19 value ($b)</th>
<th>2017–18 value ($b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beef and veal</td>
<td>7.97</td>
<td>7.78</td>
</tr>
<tr>
<td>Wheat</td>
<td>5.17</td>
<td>4.89</td>
</tr>
<tr>
<td>Wool</td>
<td>4.71</td>
<td>4.34</td>
</tr>
<tr>
<td>Dairy</td>
<td>3.22</td>
<td>3.19</td>
</tr>
<tr>
<td>Wine</td>
<td>2.80</td>
<td>2.78</td>
</tr>
<tr>
<td>Cotton</td>
<td>2.57</td>
<td>2.19</td>
</tr>
<tr>
<td>Lamb</td>
<td>2.36</td>
<td>2.15</td>
</tr>
<tr>
<td>Sugar</td>
<td>1.66</td>
<td>1.81</td>
</tr>
<tr>
<td>Fisheries products</td>
<td>1.59</td>
<td>1.58</td>
</tr>
<tr>
<td>Barley</td>
<td>1.25</td>
<td>2.08</td>
</tr>
<tr>
<td>Canola</td>
<td>1.11</td>
<td>1.36</td>
</tr>
<tr>
<td>Live feeder/slaughter cattle</td>
<td>1.11</td>
<td>1.11</td>
</tr>
</tbody>
</table>

Note: 2018–19 values are forecasts and 2017–18 values are estimates. Source: ABARES (2018a)
The future of Australia’s agricultural trade and market access is bright. Australia sits on the edge of the strongest growing region in the world. We have a well-developed agriculture sector with sound prospects for expanding our exports overseas (Commonwealth of Australia 2015).

At present, 20.5 per cent of Australian food and agricultural exports go to the Association of Southeast Asian Nations (ASEAN). These are growing at around 7 per cent per annum, especially into large emerging middle-class markets in the region (Austrade 2018). In the developing Asian region alone, over one billion people are expected to shift into the middle classes by 2060 (RIRDC 2015). The emerging middle class in Asia, particularly in China, is demanding higher protein food sources such as dairy products, beef, seafood and sheep meat, as well as high-value beverages, such as wine (Australia China Business Council 2014). Increasingly, affluent consumers in our key overseas markets are also seeking premium and niche food products.

Australia is well-placed to capitalise on the growth of Asian consumers due to our international reputation as a reliable supplier of safe, high-quality agricultural products. This reputation is underpinned by Australia’s food safety controls and our robust export legislative framework. Reliable access to overseas markets is vital to ensuring increased profitability for the Australian agriculture industry. Being able to access a broad range of markets increases the opportunity for greater export options and higher profits for Australian farmers, producers and export businesses. The success of our agricultural exports helps farmers and farm businesses invest further in their properties and people. This in turn benefits their communities and local economies, which are usually in regional areas of Australia. In 2016–17, there were 979 exporters of agriculture, forestry and fishing products (ABS 2018a) and more than 88,000 agricultural businesses in Australia (ABS 2018b). There was a total of 304,000 people employed in agriculture, forestry and fishing in Australia in 2016–17 (ABARES 2018a).

However, market access is dependent on our trading partners’ continuing confidence in the quality and safety of Australian products. Australia’s trading partners have an expectation that the Australian Government will provide the assurance that our agricultural goods continue to meet their requirements.

Maintaining access to markets, and negotiating new or improved import conditions, is becoming more complex and challenging. Consumer demands are changing, importing countries are implementing increasingly strict food safety and biosecurity requirements and Australia is facing more competition in our export markets.

Maintaining market access relies on:

- a robust regulatory framework for Australian exports, which underpins the certification and other assurances provided by the Government that goods exported from Australia meet importing country requirements
- Australia’s strong biosecurity status, which protects our animal and plant health status and enables the negotiation of enviable technical market access conditions for our exports
- the Australian Government’s work to reduce or remove trade distortions in the international market to create a more open and equitable trading environment
- the negotiation of free trade agreements, which promote stronger trade and commercial ties with key trading partners.
Box 1: Enabling agricultural trade and market access

Australia’s trade of agricultural products is enabled by the negotiation of technical market access and our effective, streamlined, science-based production systems that extend across the supply chain – from paddock to plate. Trade is also reliant on a rigorous and systematic approach to government certification of goods for export that provides assurance of compliance with an importing country’s food safety and animal and plant health requirements.

The department negotiates technical market access for prioritised Australian exports through bilateral and multilateral trade agreements and technical market access protocols.

Australia has eleven Free Trade Agreements (FTAs) in force. These FTAs provide export industries with tariff reductions, quota access and streamlined trading rules. Economically viable technical market access conditions must be agreed between parties in order to gain the benefits of improved trading conditions under the FTAs. Australia’s objective for bilateral technical market access protocols is that they should be consistent with World Trade Organization (WTO) obligations. This includes by adopting a ‘least trade restrictive’ approach that is scientifically justified, transparent and applied consistently.

Once technical market access is negotiated, the department certifies that the goods intended for export comply with the food safety and animal and plant health requirements of the importing country. The Export Control Act 1982 and the Australian Meat and Live-stock Act 1997 are some of the legislation that underpins these activities.

Australia’s favourable animal and plant pest and disease status, largely due to our island nation status and effective biosecurity policies, supports the negotiation of access to export markets. Australia manages biosecurity risks under the Biosecurity Act 2015, which came into effect on 16 June 2016, replacing the Quarantine Act 1908. The Biosecurity Act 2015 gives the department flexibility to recognise and manage the changing biosecurity risk environment and to improve collaboration on biosecurity across government and industry.

Development of Australia’s framework governing agricultural exports commenced over 35 years ago to provide greater oversight of the inspection and certification of goods being exported from Australia.

In 1981, products such as kangaroo and horse meat were substituted for beef in consignments that arrived in the United States. This event exposed weaknesses in consignment inspection and the administration of Australia’s agricultural export regulation, which was largely governed by the Customs Act 1901 and the Commerce (Trade Descriptions) Act 1905.

The Australian Government overhauled the regulatory framework to restore confidence in the integrity of Australian exports. This saw the introduction of the Export Control Act 1982. The Export Control Act 1982 provides the primary legal basis for the regulation of agricultural exports, enabling the Australian Government to set conditions that must be met before goods can be exported from Australia. These conditions include standards for preparing, packaging, handling and transporting goods, and the registration of export establishments for some commodities. The Export Control Act 1982 also provides authority for authorised officers (A0s) and approved persons to carry out inspections and certification activities (supported by audits and verification activities) across the export supply chain to ensure conditions of export are met. The department sets guidance for AOs through administrative documents, such as guidelines and policies, to administer and undertake export-related services and activities on behalf of the Australian Government.
State and territory governments also play a key role in the export supply chain (see Box 2). Farmers and producers are subject to separate state and territory legislation (such as transportation or animal welfare laws), which is enforced by relevant state and territory authorities. State and territory authorities also have regulatory responsibility for on-farm activities.

**Box 2: Cooperative arrangements with state and territory governments**

Cooperative arrangements between state and territory governments and the department will not change under the new legislative framework.

To minimise duplication of regulation, the department and state and territory governments have a number of arrangements in place. In most cases, if an establishment produces goods both for export and the domestic market, the department has arrangements with relevant state and territory government regulatory authorities regarding which authority will be directly responsible for regulation. These arrangements may include inspecting establishments or facilities, and conducting audits to ensure businesses are maintaining regulatory standards on behalf of each other. The results are shared between the Commonwealth and the relevant state or territory government, where appropriate.

The department verifies services delivered by the state or territory regulatory authority on its behalf, such as its audit management systems, the auditor appointment process and programs to ensure compliance across the export supply chain. State and territory regulatory authorities must be able to demonstrate to the department that auditors of establishments are competent and independent of the establishment being audited.

State and territory regulatory authorities may also provide assistance to the department to support market access when required, including supporting importing country reviews of Australia’s food production systems.

The requirements that exporters must comply with depend on the commodity to be exported and relevant importing country and regulatory requirements. Farmers, exporters and industry are responsible for developing systems to ensure they meet these requirements (see Box 3).

**Box 3: Roles and responsibilities of farmers, exporters and industry**

Farmers, exporters and industry are responsible for developing systems to ensure they meet regulatory and importing country requirements, as well as adhering to those systems to ensure traceability across the supply chain. These arrangements will not change as a result of the improved legislative framework.

The ability of Australian farmers and producers to adapt to changing market and environmental conditions is critical to success in the agricultural export process. By implementing effective processes, farmers and producers can increase the quantity and quality of production, which will inevitably support better returns at the farm gate and help to ensure the integrity of agricultural goods that are exported.

Exporters and establishments are also responsible for ensuring their goods meet the requirements of importing countries and importing businesses. Sometimes requirements set by importing businesses can be higher than those set out by the importing country.

Industry bodies also play a major role in the export process. They represent and promote the interests of their members, including exporters and businesses, and can represent a single industry or many industries. Industry bodies undertake advocacy, provide information to industry and can be sources for professional support, industry events and financial assistance. Some industry bodies are also accredited by the department to undertake functions in the export process.
A number of exporters and industry bodies have also developed quality assurance systems and standards that provide further assurances to trading partners, e.g. Meat and Livestock Australia’s ‘Livestock Production Assurance’ programs and the Australian Meat Industry Council’s chilled meat standard for exports to China. These quality assurance systems and standards push companies to improve processes continually rather than get by with the minimum requirements.

The types of goods to which the export legislation applies are divided broadly into two categories: prescribed goods and non-prescribed goods (NPGs).

- Prescribed goods, which are regulated and listed under the *Export Control Act 1982*, have specific export conditions placed on them to ensure they are fit for export to Australia’s trading partners. They are prohibited from export unless they meet these conditions. Examples of prescribed goods include live animals, meat, seafood, milk, certain grains and horticulture products.

- NPGs are not specifically listed in the *Export Control Act 1982* and are generally not subject to Australia’s export controls to the same level as prescribed goods. However, the department can provide a government certificate for NPGs if required by the importing country, at the exporter’s request. Examples of NPGs currently include animal by-products, such as wool, skins and hides, honey and processed foods.

Further detail on prescribed goods and NPGs, and the requirements for receiving Australian Government certification, is provided in Appendix A.

Other elements of the export supply chain are regulated under other Acts, such as parts of the *Dairy Produce Act 1986*, the *Wine Australia Act 2013* and the *Horticulture Marketing and Research and Development Services Act 2000*. The *Australian Meat and Livestock Industry Act 1997* (AMLI Act) sets out additional requirements (such as licensing) in relation to the export of those commodities. Specific charging legislation and regulations are in place to enable the recovery of costs associated with the provision of export services. A list of the legislation in the existing framework is at Appendix B.

**Box 4: Other Australian Government departments and agricultural exports**

While the department regulates the export of agricultural goods, other Australian Government departments and agencies also have a role, including:

- the Department of Foreign Affairs and Trade, which works with the department to achieve the best possible outcomes for Australian agricultural and food export interests in trade negotiations
- the Department of Home Affairs, which through the *Customs Act 1901*, ensures that all goods being exported from Australia are reported (as required) and gathers information regarding the nature and volume of exports
- the Australian Trade and Investment Commission (Austrade), which provides exporters (and businesses aspiring to become exporters) with information and advice to assist Australian companies in reducing the time, cost and risk of exporting
The framework has served Australia well by enabling the lucrative export of agricultural products and continues to do so.

Many of the legislative instruments that give effect to the existing framework are due to sunset on 1 April 2021 and the Legislation Act 2003 requires them to be reviewed before either being remade or repealed. This is a good opportunity to strengthen our existing framework while meeting our obligations under the Legislation Act 2003.

The department reviewed the legislative framework in 2015 (the Review) with the aim of ensuring farmers and exporters are supported by contemporary, flexible and efficient legislation and our trading partners continue to have confidence in Australia’s agricultural exports. The Review found that the majority of stakeholders were comfortable with the level of regulatory oversight and wanted it to be maintained but made more flexible to allow the Government and industry to respond to changes in technologies and future importing country requirements (Department of Agriculture and Water Resources 2016).

If the framework is maintained in its current increasingly complex and duplicative state, it may lead to inefficient export procedures, increase transaction costs, and delay the clearance of agricultural goods for export in the longer term. All these potential effects may have an adverse impact on Australia’s export trade with other countries.

In response to the Review, the then Minister for Agriculture and Water Resources announced on 3 December 2015 that the Australian Government would improve the legislative framework to better support exporters and facilitate trade.

It is in Australia’s interest to ensure that appropriate regulation is in place. The administration of this legislative framework should be the least burdensome for government, businesses, community organisations and individuals involved in the agricultural export system. Australia’s export legislation must support our agricultural industry but also provide assurance to our trading partners and deter the few that would seek to undermine our reputation.
1 The problem

Australia’s legislative framework for agricultural exports is complex, duplicative and inflexible. It consists of around 20 Acts and more than 40 legislative instruments, which have been developed and amended since 1982 to meet the changing needs of Australia’s export system and trading partners. Many of the legislative instruments are due to sunset on 1 April 2021. Stakeholders recognise that regulation is necessary to protect market access and Australia’s international reputation as an exporter of high quality agricultural products, but have identified that there is room for improvement. A summary of the key issues of the existing framework and opportunities for improvement are outlined in this section.

1.1 Duplication and complexity

The existing framework has served exporters well, assuring importing countries that Australian products comply with their requirements. However, since 1982, successive changes to our export framework have increased its complexity, making it challenging for exporters to understand.

Stakeholders support the simplification of the framework to improve its application and administration. A written submission received by the department as part of the Review articulated how administrative efficiencies could be achieved by removing duplication in the regulation:

The various commodity orders and the Export Control (Prescribed Goods—General) Order 2005 share quite a few common parts. The differences in the various orders are not that large and the administrative processes are also very similar in how the various orders are managed. There would be administrative efficiencies if the commodity orders were combined into the Prescribed Good Orders. Technical difference between commodities could be dealt with in the schedules. The administrative processes could then be harmonised.

There are 17 legislative instruments in the existing legislative framework called the Export Control Orders. The Export Control (Prescribed Goods—General) Order 2005 (PGGO) sets out a range of general conditions that apply to agricultural exports. The other 16 orders relate to a specific commodity (or commodity group) and associated products. There is commonality between many of the requirements across the orders which may provide opportunity for consolidation of instruments. For example, there are up to 12 sets of provisions setting out different requirements for export permits, eight sets of provisions dealing with audits, and five different types of export licences. This arrangement not only creates the potential for confusion for exporters, but adds to the administrative burden of compliance. See Box 5 for an example of the multiple sets of requirements that beef exporters need to meet.
Box 5: Meeting requirements as a beef exporter

An exporter of Australian beef needs to comply with requirements under:

- the AMLI Act and Australian Meat and Livestock Industry (Export Licencing) Regulations 1998 to acquire an export licence
- the Export Control Act 1982, the Export Control (Prescribed Goods—General) Order 2005 and the Export Control (Meat and Meat Products) Orders 2005 to prepare the beef meat for export, including the requirements for operating a registered establishment and having an approved arrangement in place with the department
- legislative instruments providing for the allocation of tariff-rate quotas if exporting to some markets
- legislation and associated legislative instruments that detail the applicable charges.

There is also a requirement to meet similar, but not equivalent, character tests under the Export Control Act 1982 and AMLI Act. This includes the ‘fit and proper’ person test required when applying to be in management and control of a registered establishment or an approved arrangement, and the ‘person of integrity’ test required to obtain an export licence.

1.2 Rigid regulation

The existing framework is inflexible and slow to respond to changes in the trade environment. Amendments often need to be considered and/or approved by the Parliament, the Governor-General or the Minister before they can take effect. This level of oversight means that even minor technical and operational changes to the legislation can take months, or sometimes even years, to be approved and implemented. Delays in giving effect to the required change could impact on market access and result in commercial loss for businesses involved or require exporters to comply with conditions that are no longer applicable or have changed, but are still required under Australian law.

1.3 Managing NPGs and goods other than animal, plant and food products

The existing framework sets out different requirements depending on whether the goods are prescribed goods or NPGs. There has been increasing demand from importing countries to require government certification for the export of NPGs. This has highlighted areas for improvement in the management of NPGs exports.

NPGs are goods that do not routinely have export controls placed on them because it is often not required by importing countries. Examples include wool, skins and hides, rendered meats, pet food, processed foods and rendered fats and oils. The PGGO allows for Australian Government certification of NPGs. In these circumstances, an exporter can apply for a direction that outlines the procedures to be followed and the requirements to be satisfied for the issue of a certificate. This application is for a single certificate, which means an application needs to be made for each consignment that requires Australian Government certification. The process is time and resource intensive for both exporters and the Government.

Ad hoc requests are also occasionally made of the department that include certification for products that fall outside the definition of ‘goods’ in the Export Control Act 1982. Examples of products in this category include agricultural chemical products and synthetic substances.
In these cases, the department may provide assurance through some other mechanism to facilitate trade, such as a letter to the importing country stating/confirming that the product is available for sale in Australia. However, this may not be sufficient to meet the standard required by the importing country. The lack of flexibility to provide certification for these types of goods has the potential to restrict market access for exporters.

The powers available to the department to monitor and enforce compliance under the existing arrangements for exporters of NPGs and goods other than animal, plant and food products are also limited and, in some circumstances, unclear. This lack of an appropriate compliance framework for NPGs has the potential to undermine the integrity of the export system for all exporters and to impact on the market access for Australian agricultural products.

### 1.4 Compliance and enforcement tools

Maintaining the integrity of the export legislation framework was a key concern of stakeholders during the Review. Exporters who do not comply with importing country requirements and other standards have the potential to tarnish Australia's reputation and threaten our market access: the actions of one exporter can affect the market access of all. Stakeholders thought that compliance activities should focus on the people and businesses who pose a risk to this reputation and that a range of enforcement measures should be in place to encourage compliance with the requirements.

Achieving these outcomes within the existing framework is complicated as a result of the structure of the legislative arrangements. The existing framework provides similar, but not identical, compliance and enforcement powers for different commodities under multiple pieces of legislation and the available sanctions focus on the imposition of penalties. This penalty-based regime limits the Australian Government's options to sanction offenders, as it is often not cost-effective or proportionate to impose penalties for low and medium-level offences.

The department undertakes a range of compliance and enforcement activities to ensure agricultural exports comply with the requirements of the legislation. These activities include audits, inspections, sampling, monitoring and investigation, including searching premises under warrant. The department has two options for dealing with breaches of the legislative requirements. First, it may seek the imposition of criminal penalties. Criminal penalties can be imposed by the courts, including imprisonment from six months to five years and fines of up to $105,000 for an individual or $525,000 for a body corporate. These penalties are not always proportionate to the seriousness of the offence, particularly since prosecution is resource-intensive and costly.

Alternatively, the department may rely on administrative actions to manage non-compliance. These administrative actions range from refusing to grant an export permit or suspending or revoking the registration of a registered establishment, to varying export conditions, increasing the number of audits conducted, or giving directions that must be complied with. The framework also provides for a range of preventative measures where a person or business has a history of non-compliance. These measures do not directly address non-compliance or impose a penalty as a direct response to the offence. Instead, they act to manage the risk of non-compliance in the future.
These tools have been effective at managing non-compliance with the legislation in the past. However, they do not allow for the full range of modern enforcement tools, such as civil penalties, infringement notices, enforceable undertakings and injunctions, that are available to other regulators through the \textit{Regulatory Powers (Standard Provisions) Act 2014}. These tools would allow regulators to intervene and address non-compliance and its underlying causes in a more targeted manner. A wider range of tools would encourage greater compliance, act as a deterrent to those who may seek to jeopardise our export markets and enable the department to apply more proportionate sanctions to those who break the law. See Box 6 for a hypothetical example of a compliance scenario.

\textbf{Box 6: Hypothetical compliance scenario}

\begin{quote}
Regulatory authorities in a key market for live sheep exports have inspected and tested a consignment of sheep on arrival and advised that the sheep do not appear to meet their requirements. A subsequent investigation by the department indicates pre-export treatments applied to the sheep by the exporter and the exporter’s agent were not strictly in accordance with protocol. While the current administrative sanctions (e.g. placing conditions on an export licence) were applied, the very limited range of sanctions available was considered a disadvantage in addressing the risks associated with this case.
\end{quote}

\section*{1.5 Managing the export supply chain}

Export commodity supply chains vary in size and complexity depending on the type of good being exported and the requirements of the importing country. Under the existing framework, there are a range of regulatory tools that can be used across the supply chain to provide the assurance that importing countries require. While these arrangements are working well, there are opportunities to streamline and improve the way the framework operates so that it is more responsive to changes in importing country requirements and can continue to provide the level of assurance required to maintain market access.

For example, the existing framework enables exporters, where authorised, to take responsibility for meeting importing country requirements through mechanisms such as approved arrangements, while enabling the department to have regulatory oversight. Approved arrangements allow industry to determine how best to undertake operations to meet both importing country requirements and their own commercial objectives. The complexity and prescription of existing arrangements has the potential to discourage innovation and the entry of new participants into the export sector.

There is an increasing demand by importing countries for assurance that agricultural products proposed for export are traceable across the supply chain. This is a reflection of increasing consumer demand for evidence of product integrity. The accreditation of properties is a way of providing traceability across the supply chain. For example, the \textit{Export Control (Meat and Meat Products) Orders 2005} provides for the accreditation of properties that produce beef intended for export to the European Union. This system is trusted and works well. Most other commodity rules do not currently provide for accreditation of properties. This means that if increased traceability is required by trading partners, there may be impacts on our exports while approval for new regulatory tools is obtained.

There are also opportunities to clarify and strengthen the requirements relating to the appointment of departmental, state and territory, and third party AOs. AOs undertake
verification activities that support the export of agricultural produce. The existing framework would benefit from strengthened requirements relating to the appointment of AOs. For example:

- specific direction as to when an AO appointment ceases to have effect, or at what point an appointment is revoked
- clearer requirements relating to the obligations of AOs
- clarification of situations where sanctions will be imposed on non-compliant AOs.

Box 7: Hypothetical AO scenario

Exports of melon to Country A are required to be treated with a particular chemical to address fruit fly concerns. Country A advised the Australian Government that recent consignments, which were cleared for export by a third party AO, were infested with fruit fly and questioned whether the treatment was applied. Under the Export Control Act 1982, a person can be appointed as a third party AO or have their authorisation revoked.

Given the seriousness of the allegation, the department revoked the AO’s appointment while it conducted an investigation. Following the investigation, it was found that the AO had operated as per their functions and obligations and there was an issue with the chemical itself. However, because the third party AO had their authorisation revoked, the person had to go through the appointment process again to be re-appointed, including assessment of their competency (at a cost to the AO and the department). The improved legislative framework will provide broader compliance and enforcement tools for managing third party AOs, including the ability to suspend authorisation while a review is underway. This would allow appropriate action to be undertaken by the department that is proportionate to the situation.
2 Need for government action

The Australian Government plays an important role in maintaining market access. Negotiating access to new or improved markets is complex and requires ongoing management. Maintaining and gaining technical market access, implementing an effective biosecurity system and providing certification and inspection services for imports and exports is essential to maintaining the competitiveness and growth of Australian agricultural exports.

The legislative framework underpinning the regulation and certification of agricultural exports to meet importing country requirements plays an essential role in supporting market access and the growth of the Australian agricultural exports sector. Improving the framework is necessary to ensure the regulation of exports continues to meet importing country requirements and can also provide the flexibility to enable exporters to meet future challenges and take advantage of market access opportunities.

Addressing the problems identified in the Review will build on Australia’s reputation as an exporter of high quality products that meet importing country requirements. It will also ensure the export of agricultural goods is more efficient for both Australian businesses and governments. Improving the way agricultural exports are regulated will ensure that global market access and international competitiveness continues to improve.

The proposed consolidation and improvement of agricultural export legislation would provide the foundation for a contemporary, flexible and efficient framework that:

- meets the needs of industry and government today and into the future
- is flexible and enables industry and government to make regulatory responses to a range of situations to ensure market access is maintained
- ensures that importing country requirements are met without imposing an unnecessary regulatory burden on users of the system
- is clear, transparent and easy to understand
- provides for a broader range of monitoring, investigation and enforcement powers.

If the Australian Government does not take action to address the identified problems, the export of Australian agricultural products will continue under the existing arrangements. The problems with the existing legislation will be exacerbated over time as the volume and range of exports grows and importing country requirements become more complex. Moving forward, a decision to maintain the existing framework may impact on the competitiveness of Australian exports as well as global market access for exporters.

Australia simply cannot afford not to consider improvements to its legislation, given so much is at stake.
3 Options overview

Two options have been considered to respond to the limitations that have been identified:

- **option one**: maintain the existing regulatory arrangements
- **option two**: consolidate and improve agricultural export legislation.

A non-regulatory option has not been explored as a possible option. This is because a non-regulatory option does not meet the fundamental requirement for regulatory oversight from the Australian Government for agricultural export products, as required by importing countries. Removing or diminishing the Australian Government’s role in the regulation of exports poses an unacceptable risk to the export industries.

### 3.1 Option one: maintain

Option one would continue to provide a regulatory framework with rigorous export control and certification activities, which facilitates market access for Australian agricultural produce. It would not involve any additional Australian Government intervention other than to remake the existing legislative instruments, most of which are due to sunset on 1 April 2021. As such, there would be no change to the regulatory burden on businesses, community organisations or individuals involved in the export legislative framework.

Under this option, it is likely that the existing legislative framework would continue to develop and change (by amendment, addition of new legislation and/or repeal of existing legislation) over time in response to trading partner requirements. The increasingly complex and duplicative state of the existing legislation may have an adverse impact on trade, lead to inefficient export procedures, increase transaction costs, or delay the clearance of agricultural goods for export in the future.

The existing legislation would also be required to evolve to implement government policy objectives, or to meet the department’s operational requirements (for example, legislation that allows the recovery of cost through the imposition of charges and fees for services provided), further increasing its complexity.

### 3.2 Option two: consolidate and improve

Option two would improve the legislative framework consistent with the findings of the Review, and provide the foundation for a contemporary, flexible and efficient export regulatory system. These improvements would continue to ensure that trading partners can have confidence in the Australian Government’s certification of agricultural goods for export, protecting the trade of these goods. Exported agricultural commodities are expected to be worth $45 billion in 2019–20 (ABARES 2019).

Under this option, the existing functions of the current legislative framework that underpin the Government’s export certification arrangements would be consolidated and harmonised in a new Export Control Bill (the Bill) and associated rules. The *Export Charges Collection Act 2015* will be repealed while the *Export Charges (Imposition-General) Act 2015, Export Charges (Imposition-Customs) Act 2015* and the *Export Charges (Imposition-Excise) Act 2015* will be
incorporated into the transitional arrangements and associated regulations would be remade as part of the improved framework.

The Bill will set out the overarching principles for the operation of the improved export certification system and will incorporate and consolidate common principles from the existing Export Control Orders and relevant parts of the AMLI Act. This consolidation will remove a lot of the duplication in the commodity orders. It will enable the harmonisation of requirements where it is appropriate and also continue to allow for commodity-specific approaches to regulation where needed. It will be more flexible than the existing framework, enabling the Australian Government to be more responsive and better able to manage changes and issues as they arise. New and clearer regulatory coverage and a wider range of compliance and enforcement powers will also be provided for in the Bill.

The rules to be made by the Secretary of the department will be part of the improved legislative framework, replacing many of the existing legislative instruments. As per the existing instruments, the rules will set out operational and technical requirements that exporters must meet. Any regulatory impacts associated with the rules will be assessed prior to the rules being made. The Minister for Agriculture will still have oversight of the rules for exporting goods. The Minister will need to approve any policy changes underpinning the rules before they can be implemented, and will be able to issue directions to the Secretary in relation to the Secretary’s rule-making power. The rules will also be subject to parliamentary scrutiny and oversight, as the legislative instruments are now.

The Bill will include a graduated enforcement regime to allow for more proportionate responses to non-compliance. This will provide a broader range of monitoring, investigation and enforcement powers, building on the department’s existing capabilities to protect Australia’s trading reputation and to incentivise compliant behaviour.

The Bill will consolidate the existing monitoring and investigation powers into a single set of provisions and adopt the monitoring, investigation and enforcement powers prescribed by the Regulatory Powers (Standard Provisions) Act 2014. These include expanded criminal and administrative sanctions and additional enforcement tools, such as civil penalty orders, infringement notices, enforceable undertakings and injunctions. This approach is consistent with whole-of-government policy to adopt standardised regulatory powers for Commonwealth legislation wherever possible. It will help to ensure greater integrity in the export system by better supporting those in the system who comply faster, and delivering more targeted and proportionate responses to those who do not.

The Bill will also include a single ‘fit and proper person’ test which will replace the ‘person of integrity’ test set out under section 12 of the AMLI Act. Third party AOs will be formally appointed and their obligations and requirements outlined in an ‘instrument of authorisation’ made by the Secretary, replacing the current cumbersome process of appointment through a ‘deed of obligation’.
4 Impacts of option one

4.1 Benefits
The existing legislative framework is serving agricultural exporters, farmers and producers well. It plays a critical role in gaining and maintaining access to lucrative markets for agricultural products. During 2018–19, agricultural export earnings are forecast to be worth $47.0 billion in revenue from trading partners including China, Indonesia, Japan, the United States of America, the Republic of Korea and New Zealand (ABARES 2018a). The value of agricultural exports is forecast to reach $50 billion in 2022–23 (ABARES 2018b).

The total value of Australian farm exports has been rising at an average rate of 6 per cent a year between 2009-10 and 2016-17, which is the fastest growth period in over 15 years (ABARES 2017a). The growth of export earnings from farm production over recent years reflects, to some extent, the effective export regulation in place.

The benefit of maintaining the existing export legislation is that those involved in the export system will continue to have familiarity with the framework. Stakeholders see the existing regulation as a necessary part of doing business and have established procedures and protocols to satisfy the requirements in a commercially viable way.

4.2 Regulatory impacts
There is no change in regulatory burden under this option for businesses, community organisations or individuals, as there would be no changes made to the existing framework. The framework will continue to develop over time in response to trading partner requirements and changes to government policy.

However, option one is likely to result in continuation of a piecemeal approach for amendment or addition of new legislation over time. Ongoing amendments to the legislation are likely to add to the complexity and duplicative nature of the framework, leading to administrative inefficiencies and an increased regulatory burden for agricultural exports businesses and also for the department. This could have negative implications for the effectiveness of the existing framework to facilitate the export of agricultural products.

Maintaining the existing legislation will involve remaking the existing legislative instruments that will cease to be law on 1 April 2021.

However, option one does not address the duplication, inflexibility, complexity or lack of compliance and enforcement tools in the existing framework. As a consequence, stakeholder concerns about the framework would remain and the opportunity to regulate agricultural exports in a more contemporary and flexible way will have passed. The issues would also be exacerbated over time as the volume and range of agricultural exports rises and importing country requirements become more complex. Maintaining the existing framework may affect the competitiveness of Australian exports and global market access for exporters in the long term.
5 Impacts of option two

5.1 Benefits
Under option two, the improved legislative framework will address the problems identified in Section 1. The improved legislative framework will continue to manage the export of agricultural products and facilitate assurance by the Australian Government. This maintains trading partners’ confidence that their requirements are being complied with, which has a positive effect for farmers and exporters.

The improved legislative framework will consolidate and streamline the requirements that exporters need to comply with, reducing duplication and making it easier for exporters to understand the export system, while maintaining existing regulatory oversight. It is anticipated that the improvements will create future opportunities to reduce the administrative burden on exporters and create efficiencies for government. Areas of the agricultural export legislation that are being consolidated and streamlined include:

- the registration of establishments
- approved arrangements
- the issuing of export permits and government certificates
- trade descriptions and official marks
- export licences
- audit and assessment activities
- ‘fit and proper person’ provisions
- appointment and management of AOs
- exemptions
- monitoring and investigation powers
- compliance and enforcement
- other miscellaneous and administrative provisions, including sharing of information, review of decisions, record keeping and cost recovery.

The improved legislative framework will include a range of improvements to clarify and formalise the AO program, approved arrangements, accreditation of properties and certification of non-prescribed goods. For example, the process for obtaining a certificate to export NPGs, such as honey or wool, will be simpler, as exporters will no longer need to apply for a direction from the Secretary before they apply for a certificate. This removes one of the steps in the application process, saving exporters time, effort and cost.

The Bill will include provisions that allow the department to provide assurance for a wider range of agricultural products than the existing legislation. In addition to goods that are derived from plants or animals, or are food products, the department will be able to regulate and certify other goods within its remit, such as agricultural chemical products and synthetic substances. Increasing the flexibility of the legislation in this way will better facilitate access to markets and
allow exporters to adapt more quickly to changing trade environments. It will also provide the department with improved capability to manage non-compliance associated with these goods should the need arise.

The proposed graduated compliance and enforcement regime will strengthen the department’s regulatory efforts. The department will be better able to target sanctions and ensure more proportionate responses to non-compliance. The sanctions will include administrative action, such as revocation or suspension of registration or a licence, injunctions, enforceable undertakings, infringement notices, and civil and criminal penalties for the most serious conduct. A more targeted sanctions regime gives all participants greater assurance about the integrity of the system and makes exporting easier for those with a strong history of compliance. This change will also align the export compliance and enforcement framework (where appropriate) with that of imports, which is governed by the Biosecurity Act 2015.

The flexibility that is lacking under the existing arrangements will be addressed, to a large extent, through the rules, which will replace the existing legislative instruments. As per the existing instruments, the rules will set out operational and technical requirements that exporters must meet, such as where and how products will need to be prepared, and when permits and certificates will be necessary in order to export from Australia. The Bill delegates the rule-making power to the Secretary of the department, reflecting the likelihood that export requirements may need to be amended at short notice and relatively frequently to respond to changing importing country requirements. This will ensure that Australian Government decisions on technical and operational matters are made at the appropriate level and no longer need to be made by the Minister for Agriculture or the Governor-General of Australia.

The Minister for Agriculture will still approve any changes to the policies and regulatory powers underpinning the rules, such as the imposition of regulatory provisions on previously non-prescribed goods, before they can be implemented. The rules will also be subject to requirements under the Legislation Act 2003, including parliamentary scrutiny and oversight. The Bill will include a power for the Minister to issue directions to the Secretary in relation to the Secretary’s rule-making powers.

Developing modern legislation is expected to help address many of the issues that industry stakeholders identified in the Review, and improve the department’s administration and certification of agricultural exports. While some specific examples of reductions to the regulatory burden are detailed below, a full quantitative assessment of the benefits described above is not possible. It is likely that benefits will become more quantifiable as the rules are developed, as they will detail commodity-and-situation-specific requirements.

### 5.2 Regulatory impacts

The improved legislative framework under option two is expected to benefit farmers, producers, exporters and the department. The department does not expect regulatory burden to be increased, as calculated with the Regulatory Burden Measurement (RBM) Framework, as a result of improvements proposed in the improved legislative framework.

The quantitative assessment of the estimated changes to the regulatory burden is focused on those changes that have the most significant reduction for businesses, community organisations and individuals. The RBM savings are a subset of the broader impacts and do not reflect other
benefits that cannot be quantified using an activity-based costing methodology. See Appendix D for details on how the department has calculated the regulatory costs in the RIS.

**Box 8: Examples of reduced regulatory burden**

<table>
<thead>
<tr>
<th>Example 1: ‘Fit and proper person’ test</th>
</tr>
</thead>
</table>
| The ‘fit and proper person’ test set out in the Bill will continue to provide assurance that (as far as is practicable) those operating in the export industry will act honestly in the conduct of their business. Currently, section 4.05 of the PGGO provides for who is a ‘fit and proper person’ (and an ‘associate’ of the person) for the purposes of the Export Control Act 1982. Other legislative instruments in the framework make full use of these arrangements, while others replicate or recreate provisions with a similar effect. Section 12 of the AMLI Act sets out a similar test for its own purposes, being the ‘person of integrity’ test. The Bill sets out a single ‘fit and proper person’ test that is comparable to the test currently set out in the PGGO. This test will also replace the ‘person of integrity’ test set out under section 12 of the AMLI Act. The government will be able to use information gained through the ‘fit and proper person’ test across the export system, rather than requiring exporters, processors and others to make multiple applications to satisfy multiple tests. The ‘fit and proper person’ test will identify persons who, for example, have been convicted of an offence against or ordered to pay a fine under the export legislative framework or the Biosecurity Act 2015, or who have previously had their licence or registration revoked for non-compliance with the framework and these people may not be found a ‘fit and proper person’. For example, in the case of a beef exporter, this will result in a measurable reduction in regulatory burden, as there will no longer be a separate requirement to satisfy the ‘person of integrity’ test in relation to an application for an export licence and the ‘fit and proper person’ test in relation to the registration of an establishment or an application for an approved arrangement. The estimated saving, of $0.102 million per annum, is a result of the reduction in the time required to comply with the two separate existing requirements. Calculations of this estimated reduction of regulatory burden is shown in Table 3.

<table>
<thead>
<tr>
<th>Example 2: Appointment and obligations of third party AOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under the improved framework, third party AOs will be formally appointed and their obligations and requirements outlined in an ‘instrument of authorisation’ made by the Secretary. The instrument of authorisation will have immediate effect. This means a third party AO candidate that has met the pre-requisite requirements (including satisfying the ‘fit and proper person’ test and training and assessment requirements set out in the legislation) can commence without delay. This is a simplified process in contrast with existing practice to appoint third party AOs. For example, for plant exports, third party AOs are currently required to read, sign and return a Deed of Obligation (which sets out their obligations and requirements as an AO) before the department can issue an instrument of appointment. Under the improved legislative framework, the delay in appointment that currently occurs between the signing of the deed and the department issuing the instrument of appointment will be removed. This change will save up to 10 working days in the appointment process. While exporters would have the option of continuing to use a departmental AO or other third party AO during this time, there may be delays (and additional costs) associated with obtaining these services. The estimated saving of regulatory burden under option two compared to option one is $0.286 million. A summary of the costing is at Table 4. The Bill will continue to provide the mechanisms to sanction third party AOs.</td>
</tr>
</tbody>
</table>
5.3 Net impact

The improved legislative framework will continue to give trading partners’ confidence in Australia’s agricultural exports by maintaining the existing level of regulatory oversight of exports by the Australian Government. By removing duplication and complexity, the improved framework will make it easier for producers, exporters and industry to understand export requirements. This approach will enable more efficient administration by the department. It will also help to strengthen the rigour and regulatory responsiveness of the department. The framework will also provide broader and more proportionate compliance and enforcement powers to safeguard Australia’s trading reputation.

Option two would provide the foundation for a contemporary, flexible and efficient framework that:

- meets the needs of industry and government today and into the future
- is flexible and enables industry and government to respond to a range of situations to ensure market access is maintained
- ensures that importing country requirements are met without imposing any unnecessary regulatory burden on users of the system
- is clear, transparent and easy to understand
- provides for a broader range of monitoring, investigation and enforcement powers.

A strong legislative framework will enable the effective management of agricultural exports in a manner that enhances Australia’s capacity to gain, maintain and grow our global market access for exports into the future. This will give exporters, farmers and producers the benefits that come with successful trade, including encouraging investment and more rapid economic growth in Australia. It is expected that there will be potential for the volume and value of agricultural exports to increase as a result of improving the framework, including by encouraging new exporters to enter the global trade arena.

It is also estimated that improvements to agricultural export legislation will deliver quantifiable reductions in the regulatory burden for businesses. This is estimated at $0.388 million per year or $3.88 million in total over ten years. See Table 2, 3 and 4 below.

### Table 2: Summary of changes in regulatory burden estimates for option two, over one year

<table>
<thead>
<tr>
<th>Options</th>
<th>Businesses ($m)</th>
<th>Community organisations ($m)</th>
<th>Individuals ($m)</th>
<th>Total ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Streamlined ‘fit and proper person’ test</td>
<td>(0.102)</td>
<td>–</td>
<td>–</td>
<td>(0.102)</td>
</tr>
<tr>
<td>Appointment of third party AOs</td>
<td>(0.286)</td>
<td>–</td>
<td>–</td>
<td>(0.286)</td>
</tr>
<tr>
<td>Change in regulatory costs</td>
<td>(0.388)</td>
<td>–</td>
<td>–</td>
<td>(0.388)</td>
</tr>
</tbody>
</table>

Note: Bracketed figures represent savings.
Source: Department of Agriculture
Table 3: Estimated change in regulatory burden from using ‘fit and proper person’ test to assess meat licence applications, by option

<table>
<thead>
<tr>
<th>Options</th>
<th>Businesses ($m)</th>
<th>Community organisations ($m)</th>
<th>Individuals ($m)</th>
<th>Total ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option one: existing requirement of providing evidence for multiple character tests (business as usual)</td>
<td>0.153</td>
<td>-</td>
<td>-</td>
<td>0.153</td>
</tr>
<tr>
<td>Option two: if a person is already deemed fit and proper, no further evidence is required</td>
<td>0.051</td>
<td>-</td>
<td>-</td>
<td>0.051</td>
</tr>
<tr>
<td>Change in regulatory costs</td>
<td>(0.102)</td>
<td>-</td>
<td>-</td>
<td>(0.102)</td>
</tr>
</tbody>
</table>

Note: Bracketed figures represent savings

Source: Department of Agriculture

Data and assumptions

- Number of businesses affected: 371 (based on number of meat export licences granted from 1 June 2016 to 31 May 2017). Export licences are typically renewed every 1 to 5 years depending on the validity period. A new application is required each time.

- Hours of effort for a person to perform the task each time:
  1) Option one = 6 hours (this includes 4 hours to complete a meat export licence application, including providing evidence for the ‘person of integrity’ test, plus 2 hours of time spent providing additional character test evidence in other applications; for example, to become an occupier of a registered establishment)
  2) Option two = 2 hours (time it takes to complete a licence application, without the need to provide evidence of being fit and proper as this has already been established).

- Staff used to perform the task: non-managerial employee with wage rate of $39.31 per hour at 75 per cent overheads and on-costs.

- Calculations:
  3) Option one: $39.31 * 1.75 * 371 * 6 = $153,132.
  4) Option two: $39.31 * 1.75 * 371 * 2 = $51,044.
Table 4: Estimated change in regulatory burden from streamlined appointment of third party AOs, by option

<table>
<thead>
<tr>
<th>Options</th>
<th>Businesses ($m)</th>
<th>Community organisations ($m)</th>
<th>Individuals ($m)</th>
<th>Total ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option one: third party AO must sign deed of obligation and return to the department and wait up to 10 days for instrument of appointment to commence their duties (business as usual)</td>
<td>0.286</td>
<td>–</td>
<td>–</td>
<td>0.286</td>
</tr>
<tr>
<td>Option two: Instrument of authorisation is sent to competent third party AO who upon receiving can commence their duties</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Change in regulatory costs</td>
<td>(0.286)</td>
<td>–</td>
<td>–</td>
<td>(0.286)</td>
</tr>
</tbody>
</table>

Note: Bracketed figures represent savings.

Source: Department of Agriculture

Data and assumptions

- The action is performed 268 times. This is based on historical data of the number of new third party AOs for plant exports appointed from 1 June 2016 to 31 May 2017. It is assumed that each new third party AO works at a separate business.

- Hours of effort for a person to perform the task each time:
  5) Option one = 1 hour. This takes into account the time it takes to read, sign and send the deed of obligation back to the department plus delay costs incurred while waiting for the appointment before beginning duties
  6) Option two = 0 hours as the AO receives an instrument of authorisation and can then commence their duties immediately

- Staff used to perform the task: non managerial employee with wage rate of $39.31 per hour at 75 per cent overheads and on-costs

- According the RBM framework, delay costs refer to the costs to business when waiting on government action to commence trading. For this regulatory burden estimate, the department assumes that each of the 268 businesses will experience a $1000 loss of income. This loss of income results from the AO candidate not being able to conduct inspection activities for the business immediately after being assessed as competent. The department notes that any impact would vary between export businesses and a range of market factors. It is possible that the loss of income is actually much higher than what is estimated here. Additionally, there would be other regulatory costs involved with businesses using alternatives to their own third party AO. For example, requesting a departmental AO to perform the inspection of the consignment instead and any other costs associated with delay of getting an inspection.

- Calculations:
  7) Option one: ($39.31*1.75*268*1) + ($1,000*268) = $18,436 + $268,000 = $286,436
  8) Option two: $39.31*1.75*268*0 = $0.
6 Trade impact assessment

The level of regulatory oversight of exported agricultural products will not change under the new framework. Trade is, therefore, expected to continue unaffected. Further, the changes proposed as part of option two, particularly those which relate to enhanced compliance and enforcement, are expected to be welcomed by Australia’s trading partners based on informal comments made during the consultation period.

The full suite of changes under the improved legislative framework will provide further confidence that exported produce meets agreed food safety standards, as well as animal and plant pest and disease requirements. Under option two, the negotiation of technical market access for prioritised agricultural exports through bilateral and multilateral trade agreements and technical market access protocols will continue without change.

The Australian Government is committed to ensuring there is no disruption to trade and that trading partners continue to accept the legal basis of our certification arrangements. The department is engaging extensively with trading partners during the development and implementation phases of the new export regulation framework.

The changes proposed in the improved legislative framework are expected to have a positive impact on exporters, farmers and producers. Through the improvements associated with the new export legislation, more businesses and individuals may be encouraged to engage in international trade in agricultural products. The improved legislative framework under option two will facilitate trade by harmonising and consolidating the requirements that exporters need to comply with in order to trade. The improved legislative framework does not impose additional requirements, but rather sets the principles for a contemporary, flexible and efficient legislative framework that meets the needs of government and industry into the future.
7 Consultation

7.1 Consultation objective
Reform of Australia’s agricultural export legislative framework has been consistently informed by those it serves – Australia’s agriculture industry, exporters, the general public and our international trading partners. The Export Control Bill 2019 is built upon stakeholder feedback received since the 2015 Review and through subsequent consultations on the 2017 Bill and consultation drafts of the commodity-specific rules. The feedback demonstrated that export legislation was critical for Australian agricultural exports, and that there was value in improving the framework to make it more flexible and streamlined.

The department is working with all stakeholders to ensure the improved legislative framework meets their needs, while maintaining the Australian Government oversight that provides the foundation for our export industry and is expected by our trading partners. Extensive and inclusive stakeholder consultation has been a feature of the development of the Bill and is detailed in this section.

7.2 Key stakeholders
The department has, and will continue to, consult the following stakeholders:

- the Australian agricultural industry, including primary producers, exporters and peak industry bodies
- international trading partners
- state and territory governments
- Australian Government agencies
- the general public.

7.3 Consultation process
*Agricultural Export Regulation Review*

In July 2015, the department released a discussion paper as part of its review of Australia’s agricultural export regulation. The discussion paper invited public comment and submissions on whether the existing export regulation:

- meets the needs of industry and government today and into the future
- is flexible and enables industry and government to respond to a range of situations and contemporary issues
- ensures that importing country requirements are met without imposing any unnecessary regulatory burden on users of the system
- is clear, transparent and easy to understand.

Consultation on the discussion paper was undertaken between July and September 2015. The department met with 81 industry stakeholders, 14 state and territory government
departments, and 13 Australian Government agencies. The department received 25 written submissions.

Consistently, stakeholders recognised regulation as necessary to protect market access and Australia’s international reputation and were comfortable with the existing level of regulation.

While it was acknowledged that the existing legislative framework effectively underpins our agricultural exports, the majority of stakeholders thought there was scope for improvements to better support farmers and exporters to meet future importing country requirements and take advantage of trade opportunities, including:

- clearer, more streamlined, and user-friendly export regulations
- consistent regulation across commodities, with generic requirements applied where possible across all exports, rather than on a commodity-by-commodity basis - this is particularly relevant for those stakeholders that deal with multiple commodities and/or multiple markets
- increasing flexibility and opportunities for government-industry cooperation
- strengthening compliance and enforcement arrangements.

Further detail on stakeholders’ views can be found in the consultation report, which was published on the department’s website in May 2016.

Consultation on the development of the improved legislative framework

The department conducted an extensive consultation campaign on the development of the export legislative framework, including using online and print media advertisements designed to keep stakeholders informed and encourage ongoing engagement during the development of the legislation. The department engaged with stakeholders through participation in the department’s industry consultative committees, direct engagement with peak industry bodies, consultation with state and territory government colleagues and colleagues in other government departments, and by providing briefings to embassy officials.

A sanitary and phytosanitary (SPS) notification for trading partners was made in 2015 regarding the review and Australia’s decision to move forward with a new export legislative framework. This is consistent with our international obligations. The SPS notification has been updated several times since 2015, including in relation to the 2017 and 2019 Bill.

An exposure draft of the 2017 Bill and the RIS were released for public comment for 60 days from 25 August 2017 to 24 October 2017.

Information sessions were held around Australia to engage stakeholders, including state and territory government colleagues, on the draft 2017 Bill and RIS. Teleconference facilities were provided for stakeholders who were unable to attend in person.

The information sessions provided a forum to discuss the changes and expected benefits of the improved legislative framework. The department noted that the level of regulatory oversight it would provide will not change and that current cooperative arrangements with state and territory governments will also remain the same. Stakeholders were given the opportunity to ask questions, raise concerns and to test the practical application of the 2017 Bill.
A summary of the information sessions is provided in Table 5.

**Table 5: Information sessions on the draft 2017 Bill and RIS**

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Industry and businesses</th>
<th>Foreign government officials</th>
<th>State and territory government</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 September 2017</td>
<td>Canberra</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11–12 September 2017</td>
<td>Beijing, China</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>13–14 September 2017</td>
<td>Tokyo, Japan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>15 September 2017</td>
<td>Seoul, Republic of Korea</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>19 September 2017</td>
<td>Canberra</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20–22 September 2017</td>
<td>Brisbane</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20–22 September 2017</td>
<td>Perth</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26–27 September 2017</td>
<td>Melbourne</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26–27 September 2017</td>
<td>Hobart</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28 September 2017</td>
<td>Albury</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4–5 October 2017</td>
<td>Wellington, New Zealand</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9–10 October 2017</td>
<td>Adelaide</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9–10 October 2017</td>
<td>Sydney</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11–13 October 2017</td>
<td>Washington, United States</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>11–12 October 2017</td>
<td>Darwin</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16–17 October 2017</td>
<td>Cairns</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The department met with foreign government officials in key markets (China, Japan, the Republic of Korea, the United States and New Zealand). The department’s agricultural counsellors in Australian embassies and high commissions overseas have briefed stakeholders from other trading partners, including governments and importers. Engagement with trading partners was aimed at providing assurances that the current level of regulatory oversight will be maintained and that they will not see any changes in the arrangements that underpin our official government certification. No concerns were raised by trading partners.

Trading partners noted that the 2017 Bill consists of a framework of regulatory measures and that the rules will cover the detail regarding which measures will apply to each commodity. Engagement with Australia’s trading partners has continued as the rules are being developed.

**Lapsing of the 2017 Bill**

The 2017 Bill was introduced into the Senate on 7 December 2017, and lapsed when Parliament was dissolved ahead of the 2019 Federal Election.

**Consultation on the Bill and draft commodity-specific rules**

Development of the rules commenced in mid-2017 and has continued since that time. Stakeholders from the meat, dairy, fish and egg sectors were consulted extensively during the
development of these instruments. A summary of the consultations undertaken to date on the
draft commodity-specific rules is provided in Tables 6 and 7.

Table 6: Information sessions on the draft Meat Rules 2020

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Internal department stakeholders</th>
<th>Industry and businesses</th>
<th>State and territory government</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 November 2018</td>
<td>Sydney</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 November 2018</td>
<td>Sydney</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>22 November 2018</td>
<td>Canberra</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>26 November 2018</td>
<td>Brisbane</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>28 November 2018</td>
<td>Melbourne</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>10 December 2018</td>
<td>Canberra (+ Video Conference)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>12 December 2018</td>
<td>Perth</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>13 December 2018</td>
<td>Adelaide</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

Table 7: Information sessions on the draft Milk, Egg and Fish Rules 2020

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Internal department stakeholders</th>
<th>Industry and businesses</th>
<th>State and territory government</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 March 2019</td>
<td>Melbourne</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>13 March 2019</td>
<td>Hobart</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>14 March 2019</td>
<td>Adelaide</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>19 March 2019</td>
<td>Brisbane</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>20 March 2019</td>
<td>Sydney</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>21 March 2019</td>
<td>Perth</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>22 March 2019</td>
<td>Canberra (+ Video Conference)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Consultation on other rules will be undertaken as they are developed.

The draft Bill and the Export Control (Consequential Amendments and Transitional Provisions) Bill 2019 (C&T Bill) as well as the charging legislation (Export Charges (Imposition – Excise) Amendments Bill 2019, Export Charges (Imposition – Customs) Amendment Bill 2019 and Export Charges (Imposition – General) Amendment Bill 2019) were released for consultation in August 2019. These Bills reflects the improvements to agricultural export legislation proposed under option two. The release of this document with the draft Bills aligns with the start of the public consultation period.
7.4 Outcomes of consultation

Stakeholders have been very receptive to the information that has been provided on the website, to departmental-industry consultative committees, directly to peak bodies and through the information sessions.

The majority of participants at the information sessions have endorsed the flexibility the improved legislative framework provides by allowing the Secretary of the department to make rules. They noted that this is particularly important to enable the department to respond quickly to changes in importing country requirements, as well as changing the level of regulation (for example, prescribing goods) where necessary to protect or facilitate market access. In the main, stakeholders noted that there are checks and balances on this power to ensure regulation is applied judiciously and that the regulatory framework is robust. This includes the requirement to obtain policy authority for policy changes, the Minister’s direction power, as well as Parliamentary oversight (as the rules are disallowable legislative instruments).

The application of the standard compliance and enforcement provisions in the Regulatory Powers (Standard Provisions) Act 2014 generated some discussion. The majority of stakeholders welcomed the greater range of compliance and enforcement powers that will allow the government to intervene and address non-compliance in a more targeted manner to protect established and emerging markets. A small number of attendees were interested in further information to understand the policy underpinning the application of the new powers and how it would work. The department advised that this would be covered as part of the implementation activities and that stakeholders would be involved in the discussion.

State and territory governments were assured the new export legislation framework would not affect current arrangements and welcomed information-sharing provisions for the purposes of managing biosecurity as well as export market access. The provisions will allow information to be shared across the Australian Government and with state and territory governments to manage risks and to allow for monitoring, compliance and enforcement activities to be conducted.

Industry participants also supported the information-sharing provisions for the purpose of promoting the objects of the Act.

The department received 25 submissions from businesses, industry groups and state and territory governments during consultation on the 2017 Bill.

Some submissions supported proposed improvements, while others queried the value of some of the changes and questioned how some improvements would work in practice. Some submissions included operational matters that were provided to the responsible area/s of the department for consideration, particularly as the rules continue to be developed over 2019 and 2020.

None of the submissions indicated that the proposed new export legislative framework should not proceed. Most stakeholders supported a simpler and more flexible export legislative framework and the expanded compliance and enforcement regime. Amongst the responses there was clear recognition of the role of efficient and effective export legislation in underpinning the growth and maintenance of our export industries. A large number of submissions noted that the operational detail for the sectors of interest to them would be
included in the rules, as and when they are developed. Respondents asked that the department continue to engage with them, as the department has advised it would, during the development of the rules.

While some submissions noted the benefits of the rules (such as the submission provided by the dairy industry), other submissions raised concerns regarding the detail of exactly how the Secretary would use this power and that limits on the Secretary's discretion were not clear (such as submissions provided by the meat, livestock and grains industries). The meat and livestock industries also queried AO powers, the ‘fit and proper person’ test provisions and how the new compliance and enforcement powers would work. The grains industry raised additional concerns in their submissions about possible future traceability requirements for their sector and how this would be implemented for a bulk consignment commodity.

A number of these matters will be covered in the rules and accompanying operational policy. Others concerned importing country requirements. The department met with the industries that had raised major concerns in their submissions. Key amendments to the 2017 Bill resulting from the consultation included:

- **Revising the directions powers of the Secretary and authorised officers (AO):**
  Stakeholders queried the relationship between the power of the Secretary and the power of authorised officers to issue directions to occupiers of registered establishments. In response, the department proposed clarifying the grounds on which the Secretary may issue a direction, and adjusting the penalties associated with failing to comply with an AO’s direction to better reflect their purpose in the export control framework.

- **Amending the role and powers of approved auditors and approved assessors:**
  Stakeholders queried whether the powers of approved auditors and approved assessors properly reflected the way they conducted their activities. The department proposed to amend the powers of these persons to better reflect the fact that these activities are largely done with consent, and that the appropriate remedy for a person failing to comply with or assist in an audit or assessment will generally be for the auditor or assessor to fail that person.

- **Clarifying the application of the ‘fit and proper person’ test to export licences:**
  Following stakeholder feedback, the department proposed to amend the Bill to make it clear that the ‘fit and proper person’ test will apply to most kinds of export licences, but not all. Under the current framework, holders of export licences for meat or livestock must be ‘persons of integrity’ (equivalent to ‘fit and proper person’). However, holders of licences for most forest products do not need to be ‘fit and proper person’ for the purposes of the Act. The amendments to the Bill will enable the current requirements to continue under the new framework.

Each change to the Bill was within the scope of this reform—that is, to improve the export legislation framework in a way that will continue to give authority to the Australian Government to certify that goods for export meet importing country requirements, but will not change the level of regulatory oversight of agricultural exports.

Clarification of the Secretary’s rule-making powers and the limitations and caveats around this power were carefully explained.
The department has responded to all those who provided submissions, noting how the issues raised in the submissions have been addressed. The department is satisfied that it has worked effectively with stakeholders to address their concerns.

Most stakeholders were conscious that it will be the rules giving effect to the Bill that will provide the most opportunity for reform. Stakeholders have reiterated the importance of ongoing consultation during the development of the rules. The department is committed to continuing engagement with stakeholders throughout the development of the rules and the implementation process, including any future changes to the regulatory framework in response to changing import conditions under the improved legislative framework.

Stakeholders supported the department’s assessment of the benefits and reductions to regulatory burden delivered by the new legislative framework, and therefore validated the assumptions that had been made by the department.

*Ongoing consultation*

The department will continue to conduct rolling consultations with stakeholders during the development of the rules to ensure they are fit for purpose and do not have any unintended consequences for trade and exporters. The rules identify what and how powers in the Bill will be used for each agriculture commodity exported. Drafts of the rules will continue to be made available for comment. The department will, again, develop and roll out a final consultation plan, which will include consultations with all stakeholders and key trading partners on the final package.
8 Best option

Option two: consolidate and improve

The Review found the current legislative framework is complex, duplicative and inflexible and identified benefits that could be gained from consolidating and improving the framework. These findings have been reinforced through subsequent consultation with stakeholders during the development of the Bill.

Option two addresses these issues and provides the foundation for a contemporary, flexible and efficient framework that:

- meets the needs of industry and government today and into the future
- is flexible and enables industry and government to respond to a range of situations to ensure market access is maintained
- ensures that importing country requirements are met without imposing an unnecessary regulatory burden on users of the system
- is clear, transparent and easy to understand
- provides for a broader range of monitoring, investigation and enforcement powers.

The improved legislative framework will consolidate and streamline the requirements for export, reducing duplication and making it easier for exporters to understand the export system, while maintaining existing regulatory oversight. It is anticipated that the improvements will create future opportunities to reduce the administrative burden on exporters as well as efficiencies for government.

The improved framework will allow the department to provide assurance for a wider range of agricultural products than the existing legislation. Increasing the flexibility of the legislation in this way will better facilitate access to markets and allow exporters to adapt quickly to changing trade environments, improving opportunities for business.

The enhanced compliance and enforcement regime will strengthen the department’s ability to target sanctions and ensure proportionate responses to non-compliant exporters and others in the system. These sanctions will include administrative action, such as revocation or suspension of registration or a licence, injunctions, enforceable undertakings, infringement notices, and civil and criminal penalties for the most serious conduct. A more targeted sanctions regime gives all participants greater assurance in the integrity of the system and makes exporting easier for those with a strong history of compliance.

Option two also delivers quantifiable reductions in the regulatory burden for businesses. This is estimated at $0.388 million per year or $3.88 million in total over ten years over maintaining the current regulatory framework (option one).

This improved legislative framework will underpin the continued growth and success of Australia’s dynamic agricultural industries. Increased scope and flexibility and reduced regulation will enable Australian agriculture to take advantage of a broader range of trade opportunities and reduce the likelihood of damaging trade disruptions.
Without an improved legislative framework for agricultural exports, Australian exporters and businesses are expected to face:

- **increased costs**: the current complex and duplicative legislation is likely to lead to inefficient export procedures, increased transaction costs, and delayed clearance of agricultural goods for export in the longer term.

- **increased regulatory burden**: problems with the existing legislation may be exacerbated over time as the volume and range of exports grows and importing country requirements become more complex.

These risks are based on the assumption that Australia will continue to be an export-focused agricultural industry and that export growth will require increasingly complex Australian Government certification and oversight.

Option two will be supported by a number of other reforms to the export system that are currently being progressed or have recently been completed:

- **Consolidation of quota administration regulation**: A RIS was approved on 28 June 2018 which examined whether export tariff rate quota regulations could be streamlined. The agreed outcomes, which will streamline quota management and consolidate its regulations, will be introduced in stages starting from late 2019. The legislative amendments will be incorporated into the improved legislative framework.

- **Live Animal Exports**: The independent Review of the Regulatory Capability and Culture of the Department of Agriculture and Water Resources in the Regulation of Live Animal Exports conducted by Mr Philip Moss AM, was provided to the Minister in September 2018. The purpose of this review was to assure government and the Australian public that exporters meet high animal welfare standards, and to identify regulatory and investigative improvements that can be made. The department are committed to supporting all 31 recommendations in the report. Relevant reforms will be included into the new legislative framework.

- **Reform of cost recovery arrangements**: New fees and charges came into effect on 1 December 2015. These reforms aligned Australia’s export certification system with an efficient and effective cost recovery model, which is consistent with the Australian Government Cost Recovery Guidelines. Charges imposed by the department for its export certification services are not part of the improvements to export legislation framework and are not covered by this RIS.

Realising the benefits of option two is contingent upon timely and effective implementation, which is covered in the next section.
Improvements to agricultural export legislation: regulation impact statement

9 Implementation

Subject to the passage of the Bill, careful implementation of the improved legislative framework is critical to ensure the transition from the existing legislative framework to the new one is seamless. The department commenced preliminary implementation planning concurrently with the development of the Bill to ensure that exporters are able to continue to operate without disruption over the transition and that trading partners will accept export certification issued under both legislative frameworks during the transition period.

The department has identified and is managing key risks that could affect implementation of the improved legislative framework. The export legislation is expected to commence just before the delegated legislation sunsets.

The period between passage of the Bill, the C&T Bill and the charging legislation and the commencement of the legislation will allow the department to put in place arrangements to facilitate a smooth transition. This will include the continued development and testing of the rules (to be made by the Secretary), which will be subject to scrutiny by the Senate Standing Committee on Regulations and Ordinances of Parliament. Some of the rules have been released for public consultation and the remaining rules will be consulted on as they are drafted.

The department has commenced and will continue to undertake a range of implementation activities, including ongoing engagement with internal and external stakeholders, to ensure a seamless transition and business continuity from the current to the new legislative framework.

Development and implementation of the improved legislative framework will continue to be monitored by an Assistant Secretary working group (ASWG) and a governance board of senior executives and the senior responsible Deputy Secretary in the department.

A detailed implementation plan confirming risk identification and management activities, resourcing requirements, timeframes and governance was developed in 2018. The implementation plan is supported by a benefits realisation plan.

9.1 Implementation challenges

Ensuring that transition to the improved legislative framework is smooth and stakeholders are prepared for the transition will be time and resource-intensive.

It is intended that the Bill, in combination with the rules, will continue to support export policy and operations currently in place. Drafting and consultation on the rules are well underway and will continue during 2019 and 2020. Preparation of the rules will require continued consultation with stakeholders in relevant sectors to ensure the operational details of the legislative framework can be practically applied and there are no unintended consequences.

Drafting and consulting on the rules will require a significant time and resource commitment from the department. If resources cannot be committed, or timeframes slip, there is a risk that the legislative framework will not be fit for purpose when the new legislation commences.

A summary of the key risks identified, including resourcing constraints and mitigation activities, is provided in Table 8 below.
An incomplete or untested framework could cause trade disruptions or undermine Australia's export reputation. To counter this risk, the department has undertaken extensive work to test the operation of the Bill, with reference to the existing framework. This work has demonstrated that there are no unintended regulatory impacts. This testing took account of the flexibility that the Bill provides for the rules to prescribe operational requirements specific to the commodity being exported and, where necessary, the importing country. Work to test the operation of the new framework is ongoing through the development of the rules. Should it be required, the Australian Government could amend the Bill (or Act, once passed) to address any legal issues that emerge before commencement, including through the C&T Bill, which has been developed during 2019 and will be introduced at the same time as the Export Control Bill 2019.

The department has engaged with stakeholders during the development of those rules drafted so far, and is committed to continuing to engage with stakeholders during the development of the remaining rules. This will help to ensure there are no unintended consequences arising from the improved legislation and the transition to the new framework is seamless.

In addition, stakeholders will be engaged in the ongoing management of the framework through established industry consultative committees. These committees will provide a mechanism to monitor the effectiveness of the new framework on an ongoing basis.

Strategies to mitigate the risk of timeframes slipping and the risk that the legislative framework will not be fit for purpose when it commences include:

- seeking an extended period for implementation by delaying the commencement of the new legislative framework following its passage through Parliament, to provide sufficient time for the legislative instruments to be developed, and for forms, training and instructional materials, websites and IT systems to be updated.

- drafting, consulting on and revising the rules prior to the finalisation of the Bill. The rules can be drafted irrespective of when the Bill is introduced and they can be refined up until they are tabled in Parliament.

- developing a strategy in 2019 for a cost effective approach to updating training and instructional material.
9.2 Implementation risks

The most significant risk from poor implementation of the improved legislative framework is disruption to Australia’s trade. Trade disruptions can result in immediate revenue loss, short and long term loss of market access for Australian exports, and damage to Australia’s reputation.

Table 8: Key risks to implementation

<table>
<thead>
<tr>
<th>Risk and likelihood</th>
<th>Consequences</th>
<th>Management and mitigation</th>
</tr>
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<tbody>
<tr>
<td>Disruption to trade. This has a possible likelihood of occurring and would have major consequences.</td>
<td>Potential trading partner dissatisfaction with Australia’s export assurance processes. Potential loss of markets and export revenue over short and longer term. Reputational damage to Australian Government and the department.</td>
<td>The department will continue to provide tailored communication to trading partners to assure them that the level of regulatory oversight over exports is not being changed. The department will incorporate trading partner feedback into the design of the transitional arrangements to stage the introduction of the improved legislative framework, as appropriate. This will provide trading partners with an opportunity to audit and assess the operation of the improved legislative framework if required.</td>
</tr>
<tr>
<td>The improved export legislation is not implemented before the sunset of existing legislation. This has a low likelihood of occurring if appropriate mitigation management is applied.</td>
<td>Failure to deliver improved export legislation before the sunset of the legislative instruments. This means that existing legislative instruments would need to be remade so they continue to support export certification until the new framework has commenced. Reputational damage to the Australian Government and the department as a result of stakeholder dissatisfaction and concern about the ability of the department to implement the improved legislative framework. Potential adverse impact on trade.</td>
<td>The department commenced the development of the improvements early to provide sufficient time for Parliamentary consideration and implementation activities to occur. The department will ensure adequate resources are available for implementation activities. Within the department, governance processes will be followed, including regular progress checks and other monitoring activities (refer to part 9.4 below).</td>
</tr>
<tr>
<td>Stakeholders do not support the new legislation or implementation activities. This has a low likelihood of occurring – especially in light of the positive feedback from consultation on the draft Bill.</td>
<td>Producers, exporters and industry representative bodies do not support the legislation. Reputational damage to the Australian Government and the department as a result of stakeholder dissatisfaction. Potential adverse impact on trade.</td>
<td>The department will continue to engage stakeholders during the development and implementation of the legislation to raise awareness of the improvements and identify any concerns and issues. This includes trading partners, exporters and industry and government stakeholders. The department will regularly assess the effectiveness of its communication products and approach to ensure engagement is effective.</td>
</tr>
</tbody>
</table>
9.3 Transitional arrangements

While both the existing and improved legislative framework serve similar purposes, they are not directly comparable. This will mean that measures will need to be put in place so there is continuity of the regulatory oversight of goods from one system to the other and administrative functions and operational activities continue to operate with minimal disruption to trade.

The C&T Bill will set out the transitional arrangements to ensure a seamless transition and business continuity from the current legislative framework to the new one, subject to the passage of the Bill. It will also ensure that the Australian Government continues to have the same level of regulatory oversight over the export of goods during the transition from the current to the new legislative framework, and can continue to provide assurance to our trading partners that goods will continue to meet their requirements.

The C&T Bill will repeal the Export Control Act 1982 and amend the AMLI Act. This change will mean that the new legislation will be the primary legislation regulating the export of agricultural goods from Australia. The C&T Bill will also update references to the Export Control Act 1982 in a range of Commonwealth legislation.

It is envisaged that the C&T Bill will, to the extent possible, allow for a graduated and seamless transition from one scheme to the other. This includes, for example:

- continued recognition of export permits and certificates, licences, approved arrangements and registered establishments issued, approved or registered under the Export Control Act 1982 for a period of time — this will allow export operations to continue without interruption up to, on and after the commencement of the new Export Control Act

- implementing measures to enable the continued recognition of appointed Commonwealth, state and territory government employees and third party AOs for a period of time — this will allow AOs to continue to undertake functions and exercise powers to monitor compliance with the legislative framework and importing country requirements

- the transition of applications made under the existing framework, but not yet decided, to the new framework

- the transition of cost recovery arrangements — this will allow payments made under the existing framework to be recognised as a payment or deposit under the new framework. It will also provide that any liability for unpaid or late payment of fees under the existing framework will continue

- enabling the review of decisions made under the existing framework — this will ensure that any people who are affected by a reviewable decision and believe an incorrect decision has been made are able to apply to have the decision reviewed

- continuation of compliance and enforcement activities to investigate possible non-compliance under the existing framework when it was in force — this will ensure investigation of non-compliance can continue and action can be taken despite the repeal of the existing legislation

- the ability for the Secretary to make transitional rules necessary or convenient to be prescribed for carrying out or giving effect to the C&T Bill.
In addition to the arrangements provided for in the C&T Bill, the department will undertake a range of implementation activities including:

- stakeholder consultation
- developing or revising instructional material for staff, if required, and training programs to be developed and rolled out before implementation
- updating documents (for example certificates) to reflect references to the new export legislation
- considering additional opportunities for reform identified during the development of the rules or through separate processes of reform and review underway within the department or the sector
- reviewing common operational requirements across the department with the objective of streamlining to the extent possible.

The department will consult with domestic stakeholders, including industry, state and territory governments and the Australian public, during the development of the rules to ensure they are fit for purpose and do not have any unintended consequences for trade and exporters. The department will, again, develop and roll out a consultation plan, which will include consultations with all stakeholders and key trading partners.

Trading partners will be engaged to ensure they are aware of changes, including changes to legislative references in export documentation. There will be no changes to protocols and other import conditions and arrangements as part of the move to the improved legislative framework.

The department will also continue to provide support to key stakeholders beyond commencement to facilitate a smooth transition.

### 9.4 Monitoring and evaluation

Experience from the development and implementation of other major legislative reforms in the department has been reviewed and taken into account in the project planning of this reform.

A governance board of senior executives in the department will continue to monitor progress during the development of the rules and through the implementation period. The board includes representatives from the department’s operational and corporate areas who provide feedback on the functionality and implementation of the improved legislative framework.

Reports will also continue to be provided to the department’s Executive Management Committee, chaired by the Secretary, which has oversight of all departmental activities and resourcing.

The department will continue to monitor progress and review the risk plan at regular meetings with the responsible Deputy Secretary. The department is monitoring interrelated reform projects, such as the quota administration regulation and the livestock export certification reforms, to ensure they are aligned.

The department plans to conduct independent ‘business readiness assessments’ to monitor the progress of the implementation and help keep activities on track. The department has conducted an internal audit of the export legislation reform during the planning phase. Assurance reviews,
including further internal audits and quality reviews, are also being considered to verify that there are no significant gaps in the program of work underway to implement the requirements of the legislation. They will play a key role in highlighting to senior management any emerging risks to successful implementation of the new legislative framework and allow time for corrective actions to be taken. Updates on the status of the project, including preparation for implementation, are provided on a monthly basis to the ASWG.

A benefits realisation plan will be developed for the implementation phase. It will describe the benefits and how they will be realised, measured and reported.

Following implementation of the improved legislative framework, the department intends to undertake a post-implementation review. Over the longer term, ongoing evaluation of the legislative framework and implementation will be undertaken as part of the department’s ‘business-as-usual’ management. This includes seeking feedback and tracking the success of the reforms through established communication channels with industry, such as the department’s industry consultative committees. Feedback will also be sought from trading partners to ensure the framework is meeting their needs.
Appendix A: Types of exported goods and regulatory requirements

What type of goods does export regulation apply to?
The types of goods that export regulation applies to are divided into two categories: prescribed goods and non-prescribed goods (NPGs).

Prescribed goods
Prescribed goods have specific export conditions placed on them to ensure they are fit for export to Australia’s trading partners, who set import conditions for their entry.

Prescribed goods include dairy, live animals, animal reproductive material, fish, plants and plant products (grain, fresh fruit and vegetables), eggs, meat and meat products, animal food (frozen raw meat), organic produce, and pharmaceuticals (raw animal material).

The export of these goods is regulated by commodity orders that set out specific matters that must be complied with and can include:

- specifications for establishments undertaking processing and preparation of goods for export
- procedures for audits and routine inspections
- operational requirements (good manufacturing practice, hygiene measures and traceability)
- risk-based hazard assessment and process control
- management commitment to adhere to requirements
- processes for obtaining export documentation (such as export permits and government certificates)
- descriptions of goods including appearance, origin and preparation (known as trade descriptions).

Non-prescribed goods
Non-prescribed goods are goods which generally do not have export controls placed on them because government-to-government certification is not required by importing countries. Government certification is sometimes not routinely required as certain non-prescribed goods are of low risk or are subject to further processing in importing countries that addresses the risk.

Non-prescribed goods include such things as nutritional supplements, cosmetics, animal by-products, wool, skins and hides, inedible blood, rendered meat meal, pet food and processed food. The department does not issue certification for non-prescribed goods if it is not required by importing countries. If an importing country requires certification for a non-prescribed good, an exporter can apply for a direction as to the procedures to be followed and requirements to be satisfied for the issue of the certificate. The procedures and requirements are subject to the
particular importing country requirement and can include that the good be fit for sale in Australia. They can also be to the effect that procedures and requirements in an Export Control Order are to apply to the preparation of the good for export.

**Regulatory requirements**

Many overseas governments make it a condition of entry into their markets that agricultural goods meet certain standards. Some require that certain goods be inspected and certified by the exporting country’s government as a condition of access to their markets. As such, there are a number of different regulatory requirements that must be satisfied to be able to export goods from Australia. Often, these will vary depending on what type of good is being exported and can range from obtaining a single certificate (for example, if it is a non-prescribed good) to a number of requirements, such as licensing and registration (for example, if it is a prescribed good).

**Inspections**

Inspections involve the examination of a product or document by an AO to detect any unacceptable abnormalities. Typically, this will mean the product does not comply with regulatory specifications or requirements. The type and range of inspections depend on the skills and training qualifications of the AO and the commodity at the establishment. Inspections are typically carried out by departmental officers. However, they may also be carried out by other classes of people, including employees of state and territory regulatory authorities (described in this section) or, for plant products, AOs employed by exporters or a third party. However, it is important to note that some countries make it a requirement that government employees undertake inspections.

**Audits**

Auditing activities ensure establishments comply with all relevant regulatory requirements. This can include whether:

- the facilities are fit for the purpose of preparing, handling, storing and/or inspecting products for export
- there are appropriate hygiene and other measures in place to ensure the goods are produced according to trade descriptions and other applicable requirements
- the goods being produced at the establishment comply with conditions in export regulation and importing country requirements.

Audits are not always conducted by the department, such as in the case of dairy export establishments, which are audited by state government regulatory authorities. Organic/biodynamic products are audited by certifying organisations that are accredited by the department.

**Compliance and enforcement**

In circumstances where requirements are not met or are suspected of not being met, monitoring, investigation and sanctions may become necessary. A range of powers can be exercised by an AO for the purpose of monitoring to ensure regulatory requirements are being met, or for investigating whether an offence has been committed. These include entry into
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premises and the ability to search and seize goods by consent or through a warrant, and entry into premises that form part of a registered establishment without consent or warrant.

A range of administrative and operational actions can also be used by the department and AOs where there is non-compliance or suspected non-compliance with regulatory requirements.

Administrative actions that can be applied include refusal to grant an export permit or revoking the registration of a registered establishment, as well as imposing conditions on a licence (in the case of meat and livestock exports). Operational sanctions that can be applied include subjecting an exporter to a higher level of inspection/audit, giving directions that must be complied with and suspending export operations at registered establishments.

For more serious offences, criminal penalties can be imposed by courts, including imprisonment ranging from six months to five years and fines of up to $63,000 for an individual or $315,000 for a body corporate. The imposition of a criminal penalty on an exporter can also affect the registration of their establishment due to the requirement for a person who manages and controls a registered establishment to be a ‘fit and proper person’.

**Communication and provision of information**

The department uses various notices across different commodities to provide information to the public about the department’s significant export–related food safety work. This can include changes to legislation, importing country requirements, guidelines and work instructions as well as advice about new protocols or market access opportunities. Such notices are sent to registered stakeholders and are placed on the department’s website.

The department also maintains a database of importing country requirements – the Manual of Importing Country Requirements or MICoR – to provide guidance to exporters regarding the conditions they are required to meet.

Contact is maintained with industry clients and stakeholders through department–industry consultative committees. These committees generally include the peak bodies for each commodity and are used to engage industry stakeholders in the delivery of services.

Stakeholders can indicate to the department which topics are of interest to them, as well as how they prefer to receive information. Communication channels include several departmental bulletins and Rich Site Summary (RSS) feeds, as well as the department’s Twitter account.
Appendix B: Existing framework

The agricultural export legislative framework consists of the following Acts and legislative instruments:

- Export Control Act 1982
  
  9) Export Control (Orders) Regulations 1982
     - Export Control (Animals) Order 2004
     - Export Control (Beef Export to the USA Tariff Rate Quota) Order 2016
     - Export Control (Dairy Produce Tariff Rate Quotas) Order 2016
     - Export Control (Eggs and Egg Products) Orders 2005
     - Export Control (Fees) Orders 2015
     - Export Control (Fish and Fish Products) Orders 2005
     - Export Control (High Quality Beef Export to the European Union Tariff Rate Quotas) Order 2016
     - Export Control (Japan-Australia Economic Partnership Agreement Tariff Rate Quotas) Order 2016
     - Export Control (Meat and Meat Products) Orders 2005
     - Export Control (Organic Produce Certification) Orders
     - Export Control (Plants and Plant Products) Order 2011
     - Export Control (Plants and Plant Products – Norfolk Island) Order 2016
     - Export Control (Poultry Meat and Poultry Meat Products) Orders 2010
     - Export Control (Prescribed Goods—General) Order 2005
     - Export Control (Rabbit and Ratite Meat) Orders 1985
     - Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2016
     - Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010
  
  10) Export Control (Hardwood Wood Chips) Regulations 1996
  
  11) Export Control (Regional Forest Agreements) Regulations
  
  12) Export Control (Unprocessed Wood) Regulations

- Australian Meat and Live-stock Corporation Amendment Act 1990


     - Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018
     - Australian Meat and Live-stock Industry (Live Cattle Exports to Republic of Korea) Order 2002
     - Australian Meat and Live-stock Industry (Standards) Order 2005
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- Dairy Produce Act 1986

15) Dairy Produce Regulations 1986
- Export Charges (Collection) Act 2015

16) Export Charges (Collection) Regulation 2015
- Export Charges (Imposition—Customs) Act 2015

17) Export Charges (Imposition – Customs) Regulation 2015
- Export Charges (Imposition—Excise) Act 2015
- Export Charges (Imposition—General) Act 2015

18) Export Charges (Imposition – General) Regulation 2015
- Export Inspection Charges Collection Act 1985
- Export Inspection (Establishment Registration Charges) Act 1985
- Export Inspection (Quantity Charge) Act 1985
- Export Inspection (Service Charge) Act 1985
- Horticulture Marketing and Research and Development Services Act 2000

19) Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002
- Wine Australia Act 2013 (Part VIB)

20) Wine Australia Regulations 2018 (Part 3)
Appendix C: List of RIS consultation questions

1) Have you ever experienced export delays to a country or loss of market access for your products as a result of the conduct of other exporters or businesses not following the requirements? If so, describe the impact of this delay on your business and your industry.

2) Do you think broader enforcement powers available to the department would assist you and your business and your industry? If so, describe the benefit it would bring.

3) Are there benefits to your business of maintaining existing arrangements? Provide examples if possible.

4) Are you aware of opportunities for a reduction in regulatory burden under the existing framework? If so, provide examples.

5) Have you experienced growth in your sector over the past decade that has been assisted by Australia’s export regulatory system? If yes, provide details.

6) Have you or your business exported or attempted to export goods that fall out of the scope of existing agricultural export legislation?
   - If so, what was your experience of this process? Did you require some sort of facilitation from the department in order to export the goods? What products were involved?
   - What information was requested by the department and what was issued by the department (for example, a letter of facilitation)?
   - What were your regulatory costs (including delays costs) associated with this process?

7) What benefit would you or your business receive if the department had a clear process for providing certification for these types of products? If you are able, please quantify this benefit in dollar terms.

8) How often do you or your business read or refer to Australia’s agricultural export legislation? If possible, describe this time spent reading the legislation as x hours per year.

9) How often do you seek legal advice on the operation Australia's agricultural export legislation?

10) The improved legislation will streamline many common export requirements. Do you expect this streamlining to benefit your business? If so, provide details of these benefits. Do you think the new arrangements will save time? If not, why not?

11) How would you or your business benefit from legislation that could be made more efficiently to align with importing country requirements?

12) Have you or your business experienced any adverse effects as a result of delays in implementing new legislation?

13) If so, describe what the impact was on you and your business. What could have been done to prevent this from happening?

14) Are you able to identify any other benefits to you or your business as a result of the improved legislation?

15) Provide details of any concerns you or your business may have about the new legislation or any of the changes as presented in this document.
16) The department has assumed that the time required to complete an application for an export licence is four hours.

Is this an accurate estimate?
If not, how long does it take? (Please include in your estimate all activities associated with making the application, including gathering relevant information and completing the form).

17) How often have you been required to apply for an export licence?

18) When completing applications for the department, do you feel like you are providing the same information multiple times? In particular, do you find that you are providing information about whether you are a ‘fit and proper person’ or ‘person of integrity’ multiple times?

19) Do you have any suggestions for how the department can make the licence application process easier or more efficient?

20) If you are a third party authorised officer or have employees appointed as authorised officers, how long did it take to receive the instrument of appointment after the deed of obligation was signed and returned to the department?

21) If there was a delay in receiving the instrument of appointment, what was the associated cost to you and/or to your business? Please include in your response:

the cost associated with the delay (including making alternative arrangements such as engaging a departmental authorised officer or another third party authorised officer, or any additional processing, storage and handling costs)
details of any loss of income resulting from the delay
details of any opportunity cost (the value of opportunities that cannot be realised because of the regulatory intervention) resulting from the delay.
Appendix D: Regulatory costs

The regulatory costs and offsets (savings) in this RIS have been calculated using the Commonwealth Regulatory Burden Measure (RBM) framework. See Box 9 in this appendix for more information. The indicative calculations presented in the RIS are, where possible, based on the most recently available departmental data. In cases where data is not available, inputs to the regulatory burden estimate calculator are based on the assumptions as set out below each table. Information gathered during the consultation on this RIS may change some of the assumptions presented. As such, regulatory burden estimate calculations may be revised or removed from the final RIS.

Box 9: Regulatory burden measurement framework

All regulatory costs, whether arising from new regulations or changes to existing regulations, must be quantified using the Commonwealth Regulatory Burden Measurement framework (Office of Best Practice Regulation 2016). The framework is supported by the Regulatory Burden Measure (RBM), a cost calculator tool available from the Office of Best Practice Regulation (OBPR) website. The tool calculates the compliance costs of regulatory proposals on business, individuals and community organisations, using an activity-based costing method.

The costs must be presented in real terms (also referred to as constant prices) as average annual figures in all cases. The default regulatory costing is for a 10 year duration. Regulatory costings of $2.0 million per annum and above need to be agreed by the OBPR. Where the OBPR agrees that a proposal is likely to involve average costs of less than $2.0 million per annum, Australian Government agencies can self-assess these costs.

The framework includes consideration of the following compliance and delay costs:

Compliance costs:
- Administrative costs: costs incurred in demonstrating compliance with the regulation (for example, record keeping, costs of making an application, notification and reporting costs)
- Substantive compliance costs: costs incurred in delivering the regulated outcomes being sought (for example, costs of providing training to employees to meet regulatory requirements, costs of professional services to meet regulatory requirements, costs of purchasing and maintaining plant and equipment).

Delay costs:
Expenses and loss of income incurred by a regulated entity through an application and/approval delay.

The following costs are excluded from the RBM framework and are not required to be considered in a regulatory costing:
- Opportunity costs (unless they relate to a delay)
- Business as usual costs (costs that would be incurred in the absence of the regulation)
- Non-compliance and enforcement costs (this includes costs such as fines and any associated legal costs, costs related to requirements or actions to ensure compliance)
- Regulatory impacts related to the administration of courts and tribunals
- Indirect costs that may arise from the impacts of regulatory changes, including changes to market structure and competition impacts
- Direct financial costs, such as administrative charges, licence and permit fees or levies
Costs of international obligations imposed as a prerequisite for participation in international markets. This exclusion applies only to the costs of performing the obligated activity. It does not exclude the demonstration of compliance to an Australian Government regulator.

Source: Office of Best Practice Regulation
## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMLI Act</td>
<td><em>Australian Meat and Live-Stock Industry Act 1997</em></td>
</tr>
<tr>
<td>Authorised officer (AO)</td>
<td>Individuals authorised under the Export Control Act 1982 to carry out inspections and certification activities (supported by audits and verification activities) along the export supply chain to ensure conditions are met. Authorised officers can be departmental staff, staff of state or territory government departments, or staff from third party businesses.</td>
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<tr>
<td>Approved arrangement</td>
<td>An arrangement between the department and a registered establishment that covers each stage of production and documents the establishment controls used to ensure: legislative and food safety requirements are met importing country requirements are met there is a sound basis for issuing an export permit or government certificate. Approved arrangements under the Bill will continue to be a condition of a registered establishment, and can also be applied at any point across the supply chain.</td>
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<tr>
<td>Bill</td>
<td>The Export Control Bill, being the proposed legislation that will form part of the improved agricultural export framework.</td>
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<tr>
<td>Establishment</td>
<td>Includes the following: a building, aircraft, vehicle or ship a place (whether enclosed, or built on, or not). Most establishments must be registered by the department to export prescribed goods.</td>
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<tr>
<td>Export Control Orders</td>
<td>Legislative instruments that specify administrative arrangements and controls that apply to the export of goods, such as meat and meat products or plant and plant products.</td>
</tr>
<tr>
<td>Export Control Rules</td>
<td>The proposed legislative instruments that will form part of the improved agricultural export framework.</td>
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<tr>
<td>Export licence</td>
<td>Licence to export given by the department to exporters of meat, livestock and forestry products following satisfaction of certain criteria...</td>
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<tr>
<td>Export permit</td>
<td>Permission given by the department (either electronically via EXDOC or in hardcopy) to export a consignment of a prescribed product. Export permits are given when legislative and importing country requirements are met.</td>
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<tr>
<td>Exporter</td>
<td>A person or company who prepares goods for export and exports the goods themselves or sells the goods to another party for this purpose.</td>
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<tr>
<td>Exposure draft</td>
<td>Exposure draft is a required stage of any Bills that intend to be introduced into Parliament. The exposure draft involves general public exposure or limited release.</td>
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<tr>
<td>Government certificate</td>
<td>A document issued by the department that certifies that goods have met relevant importing country requirements (such as animal health requirements). Government certificates are only provided by the department to exporters if they are required by the importing country.</td>
</tr>
<tr>
<td>Importing country requirements</td>
<td>Requirements set by a government body in an importing country that must be met in order for a product to be imported into that country. These are generally sanitary (food safety, animal health and human health) and phytosanitary (plant health) requirements.</td>
</tr>
<tr>
<td>Legislative instruments</td>
<td>Also known as delegated legislation. Legislative instruments are laws made under Acts of Parliament that provide detail on how legislation will be implemented, and include regulations, orders and declarations.</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<tr>
<td>Non-prescribed goods (NPGs)</td>
<td>Goods that are not regulated under export legislation, unless they require a government certificate to meet importing country requirements. Examples include animal by-products, wool, skins and hides, rendered meats, pet food, processed foods and rendered fats and oils.</td>
</tr>
</tbody>
</table>
| Preparation | Includes the following:  
slaughter or killing of animals and the dressing of carcasses  
capturing or taking of fish  
processing, packing or storage of goods  
pre-export quarantine or storage, treatment and testing of live-stock  
treatment of goods  
handling or loading of goods. |
| Prescribed goods | Goods that are regulated by the Export Control Act 1982 and specific Export Control Orders that set conditions that must be met in order to export. This includes plant or animal products, products derived from animals or plants, and food such as milk and dairy products, eggs, live animals, meat, grains, fresh fruit and vegetables. |
| Registered establishment | An establishment that is registered by the department to prepare goods for export. |
| Regulation | A rule or order, as for conduct, prescribed by authority, a governing direction or law. |
| Prescribed goods | Goods that are regulated by the Export Control Act 1982 and specific Export Control Orders, for which certain conditions must be met before they can be exported. |
| Regulation Impact Statement (RIS) | Regulation Impact Statements are a requirement of the process for developing and Australian Government regulatory proposal. A RIS is a document that outlines the likely regulatory impacts on businesses, community organisations or individuals of the policy options being considered. |
| Regulatory Burden Measure (RBM) | A cost calculator tool available from the Office of Best Practice Regulation (OBPR) website that calculates the compliance costs of regulatory proposals on business, individuals and community organisations using an activity-based costing methodology. |
| Trade barriers | Any regulation or policy that restricts international trade. |
| Traceability | The ability to trace food across the supply chain from suppliers through to customers, and vice versa. |
References


