



Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002

Statutory Rules 2002 No. 284¹

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Horticulture Marketing and Research and Development Services Act 2000*.

Dated 27 November 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

WARREN TRUSS
Minister for Agriculture, Fisheries and Forestry

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1 Name of Regulations

These Regulations are the *Horticulture Marketing and Research and Development Services (Export Efficiency) Regulations 2002*.

2 Commencement

These Regulations commence on 1 February 2003.

3 Definitions

In these Regulations:

Act means the *Horticulture Marketing and Research and Development Services Act 2000*.

arrangement with creditors includes:

- (a) an arrangement under Part X of the *Bankruptcy Act 1966*; and
- (b) any similar arrangement under a law of another country; and
- (c) an arrangement or composition with creditors that provides for payment of the debts covered by it at less than 70% of their face value.

controlling shareholder of a corporation means a shareholder who or that holds a controlling interest in the corporation.

credit assessor means a person who or that carries on the business of assessing persons' creditworthiness.

director has the meaning given by section 9 of the *Corporations Act 2001*.

dishonesty offence means:

- (a) an offence against section 131.1, 131.3, 134.1, 134.2, 135.1, 135.2, 144.1, 145.2, 145.3, 145.4 or 145.5 of the *Criminal Code*; or
- (b) an offence against section 11.4 or 11.5 of the *Criminal Code* in relation to an offence mentioned in paragraph (a); or

- (c) an offence, of a kind dealt with in Division 6.2 or 6.4 of the *Crimes Act 1900* of the Australian Capital Territory, against a law of a State or Territory, or another country; or
- (d) an offence, against a law of a State or Territory or another country, of being an accessory after the fact to an offence referred to in paragraph (c), or of incitement to commit, or conspiracy to commit, such an offence.

Note Part 7.2 of the *Code* (including sections 131.1 and 131.3) deals with theft and similar offences; Part 7.3 (including sections 134.1, 134.2, 135.1 and 135.2) deals with fraudulent conduct; Part 7.7 (including sections 144.1, 145.2, 145.3, 145.4 and 145.5) deals with forgery and related offences. Sections 11.4 and 11.5 of the *Code* deal respectively with the offences of incitement and conspiracy. Division 6.2 of the *Crimes Act 1900* (ACT) deals with general property offences of dishonesty, such as theft; Division 6.4 deals with forgery and the use of forged instruments.

export efficiency body means the body that is declared, under subsection 9 (2) of the Act, to be (for the time being) the industry export control body.

Note For **industry export control body**, see the Act, sections 4 and 9. Under section 9, the Minister is authorised to declare a body to be the industry export control body. At the time these Regulations are made, the body declared to be the industry export control body is Horticulture Australia Limited ACN 095 566 108 — see the declaration in the *Gazette* of 14 February 2001.

external administration has the same meaning as in Chapter 5 of the *Corporations Act 2001*, but also includes receivership under another law of Australia or a law of another country relating to corporations.

licence means a licence granted under regulation 7.

licensee means the holder of a licence.

4 Application of these Regulations

These Regulations apply in relation to the export of a regulated horticultural product to a market that is a regulated horticultural market in respect of the product.

5 Application for licence

- (1) An individual, a partnership or a corporation may apply for a licence.

- (2) The applicant must use the form approved by the export efficiency body for that purpose.

Note The export efficiency body is Horticulture Australia Limited, whose address is:

Level 1, 50 Carrington Street,
Sydney, 2000.
phone 02 8295 2300
fax 02 8295 2399
E-mail: info@horticulture.com.au
<http://www.horticulture.com.au/>.

- (3) The export efficiency body may require the applicant to have the applicant's financial standing assessed by a specified credit assessor.
- (4) If the export efficiency body, or a credit assessor who has been instructed by the export efficiency body to assess the applicant's financial standing, asks the applicant to give it information about the applicant's financial arrangements (being information reasonably required for the purpose of assessing the applicant's financial standing), or a statement of the applicant's assets and liabilities, the applicant must give the information or statement to the body or the assessor.

6 Matters that export efficiency body may take into account

- (1) For subregulation (2), a person is *relevantly connected with an applicant* if the person is:
- (a) in the case of an applicant that is a partnership — a member of the partnership; or
 - (b) in the case of an applicant that is a corporation, or a partnership of which a corporation is a member — an officer of, or a controlling shareholder in, the corporation, or of a corporation that is a controlling shareholder in the applicant or member.

- (2) The export efficiency body may, when considering whether to grant a licence to an applicant, take into account whether, during the previous 5 years, the applicant, or a person relevantly connected with the applicant:
- (a) held a licence that was revoked (other than at the request of its holder); or
 - (b) was a partner in a partnership that was, during that period, the holder of a licence that was revoked (other than at the request of its holder); or
 - (c) in the case of an individual:
 - (i) was a bankrupt; or
 - (ii) was subject to an arrangement with his or her creditors; or
 - (d) in the case of a corporation:
 - (i) was placed under external management; or
 - (ii) was subject to an arrangement with its creditors; or
 - (e) has been convicted of an offence against the Act or a dishonesty offence.
- (3) To avoid any doubt, for subregulation (2), the export efficiency body must not take into account:
- (a) a revocation of a licence more than 5 years before the making of the relevant application; or
 - (b) a bankruptcy from which the bankrupt was discharged more than 5 years before the making of the application; or
 - (c) an arrangement with creditors that was completed or terminated more than 5 years before the making of the application; or
 - (d) external administration from which the corporation concerned was released more than 5 years before the making of the application; or
 - (e) a conviction more than 5 years before the making of the application.

Note See Part VIIC of the *Crimes Act 1914* in relation to spent convictions.

- (4) The export efficiency body may, when considering whether to grant a licence to an applicant, take into account anything in a report prepared by a credit assessor about the applicant's financial standing.

7 Grant of a licence

- (1) The export efficiency body must, if practicable, grant or refuse to grant a licence within 56 days after the day on which the application is made.

Note The decision is reviewable by the Administrative Appeals Tribunal — see regulation 16. The applicant must be given written notice of the decision and the notice must also set out the person's right to a review — see the *Administrative Appeals Tribunal Act 1975*, section 27A. The applicant is entitled to a statement of the reasons for the decision — see that Act, section 28.

- (2) A licence document must specify the kinds of regulated horticultural product or products and the regulated export market or markets for which the licence is issued.
- (3) The export efficiency body may impose a condition or conditions on a licence.
- (4) The conditions that may be imposed include, but are not limited to conditions:
 - (a) in relation to:
 - (i) the rate of commission that is payable to the licensee in relation to exports of regulated horticultural products; and
 - (ii) the persons to whom a licensee must, or must not, export regulated horticultural products; and
 - (iii) the kinds of regulated horticultural products that may, or must not, be exported; and
 - (iv) the quality, colour, shape or size of regulated horticultural products that may, or must not, be exported; and
 - (v) the type of container or package in which regulated horticultural products must, or must not, be exported; and

- (vi) the number, including a maximum or a minimum number, of horticultural products that must be contained in a container or a package; and
 - (vii) the manner in which regulated horticultural products must, or must not, be labelled; and
 - (viii) actions that a licensee must, or must not, take if the licensee is exporting regulated horticultural products, or a specified regulated horticultural product, to a specified regulated export market or to regulated export markets generally; and
 - (b) requiring the licensee to participate in approved programs of the kind referred to in regulation 15.
- (5) If the export efficiency body imposes a condition on a licence:
- (a) it must specify the condition in the licence document, but may do so by referring to a published document that sets out the condition; and
 - (b) may vary the condition, or substitute another condition, from time to time to comply with the requirements of the relevant export market.
- (6) In subregulations (3), (4) and (5):
condition includes a restriction and a limitation.

8 Other conditions of licences

- (1) It is a condition of a licence that:
- (a) subject to subregulation (2), the licensee exports at least 1 consignment of the regulated horticultural product that is specified in the licence while the licence is in force; and
 - (b) the licensee tells the export efficiency body in writing of any change in any of the following matters within 28 days after the change occurs:
 - (i) the licensee's name, or the registered business name under which it carries on business;
 - (ii) the licensee's business address and other contact details;
 - (iii) the kind of business undertaken by the licensee; and

- (c) if the licensee is a partnership — the licensee tells the export efficiency body in writing of a change of partners within 28 days of the change; and
 - (d) if the licensee is a corporation — the licensee tells the export efficiency body in writing within 28 days of a change:
 - (i) of any controlling shareholder; or
 - (ii) that results in a shareholder holding 20 percent or more of the licensee's issued share capital; and
 - (e) if the licensee becomes bankrupt, is placed in external administration, or enters into an arrangement with creditors, the licensee tells the export efficiency body in writing within 28 days; and
 - (f) if:
 - (i) the licensee; or
 - (ii) if the licensee is a partnership — a partner; or
 - (iii) if the licensee is a corporation — a director of, or an individual shareholder who holds a controlling interest in, the corporation;
 is convicted of an offence against the Act or a dishonesty offence, the licensee tells the export efficiency body in writing within 28 days after the conviction; and
 - (g) if the export efficiency body requires the licensee to have the licensee's financial standing assessed by a specified credit assessor, the licensee has its financial standing assessed by the assessor within 28 days; and
 - (h) if the export efficiency body asks the licensee under regulation 11 to give information to the body, the licensee gives the information to the body within 28 days; and
 - (i) the licensee provides each return required under subregulation 12 (1) or (3) within the required period.
- (2) Paragraph (1) (a) does not apply to a licensee if the licensee is unable to export a horticultural product because of circumstances beyond the licensee's control, such as:
- (a) lack of supply of the horticultural product of export quality; or

- (b) lack of transport to allow the licensee to export the horticultural product; or
- (c) industrial action that has prevented the export of the horticultural product; or
- (d) a substantial reduction in access to, or the closure of, a relevant export market.

9 Duration and renewal of a licence

- (1) A licence:
 - (a) commences:
 - (i) if it is issued on or before 1 February 2003 — on that day; or
 - (ii) on the day on which it is issued; and
 - (b) ceases to be in force:
 - (i) if it is revoked — on the day on which, under subregulation 10 (6), the revocation has effect; or
 - (ii) on the 31 January following its issue.
- (2) Before a licence ceases to be in force, the licensee may apply to the export efficiency body to renew the licence.
- (3) The export efficiency body may renew the licence or refuse to renew it.

Note The decision is reviewable by the Administrative Appeals Tribunal — see regulation 16. The applicant must be given written notice of the decision and the notice must also set out the person's right to a review — see the *Administrative Appeals Tribunal Act 1975*, section 27A. The applicant is entitled to a statement of the reasons for the decision — see that Act, section 28.

- (4) Regulations 5 and 6 apply in relation to an application for the renewal of a licence as if the licensee were an applicant for the grant of a licence.

10 Suspension, revocation and variation of licences

- (1) The export efficiency body may suspend or revoke a licence if:
 - (a) any information provided by the licensee in its application for the licence is false or misleading in a material particular; or

- (b) the licensee provides information that is false or misleading in a material particular:
 - (i) to a credit assessor; or
 - (ii) to the export efficiency body in response to a notice under regulation 11; or
 - (iii) in a return under regulation 12; or
 - (c) for a licensee who is an individual, he or she:
 - (i) becomes bankrupt, or enters into an arrangement with creditors; or
 - (ii) is convicted of an offence against the Act or a dishonesty offence; or
 - (d) for a licensee that is a partnership, a partner of the licensee:
 - (i) becomes bankrupt, or enters into an arrangement with creditors; or
 - (ii) is convicted of an offence against the Act or a dishonesty offence; or
 - (e) for a licensee that is a corporation:
 - (i) the corporation, or a director of, or a controlling shareholder in, the licensee, becomes bankrupt, or enters into an arrangement with creditors; or
 - (ii) a director of, or a controlling shareholder in, the licensee is convicted of an offence against the Act or a dishonesty offence; or
 - (f) the licensee asks the body in writing to suspend or revoke the licence; or
 - (g) the licensee fails to comply with a condition of the licence.
- (2) The export efficiency body may vary a licence:
- (a) if the licensee asks it to do so — by adding a kind of regulated horticultural product to the licence; or
 - (b) if the licensee does not export a kind of regulated horticultural product set out in the licence while the licence is in force — by omitting the kind of horticultural product from the licence.

- (3) If the export efficiency body is of the opinion that a licence may be suspended or revoked, or varied under paragraph (2) (b), the body must:
 - (a) tell the licensee in writing of its opinion and the reasons for that opinion; and
 - (b) ask the licensee in writing to show cause, in writing, within a specified period of at least 21 days why the licence should not be suspended, revoked or varied.
- (4) If the licensee does not show adequate cause within the specified period, the export efficiency body may:
 - (a) suspend the licence for an appropriate period; or
 - (b) revoke the licence; or
 - (c) vary the licence.

Note The decision is reviewable by the Administrative Appeals Tribunal — see regulation 16. The applicant must be given written notice of the decision and the notice must also set out the person's right to a review — see the *Administrative Appeals Tribunal Act 1975*, section 27A. The applicant is entitled to a statement of the reasons for the decision — see that Act, section 28.

- (5) The export efficiency body may suspend or revoke a licence for failure to comply with a condition of the licence whether or not the licensee is charged with an offence in respect of the failure to comply.

Note A licensee commits an offence if a regulated horticultural product is exported other than in accordance with the conditions of the licence — see subsection 21 (2) of the Act.

- (6) A suspension, revocation or variation of a licence has effect on the day on which the export efficiency body tells the licensee in writing of its decision, or any later day specified for that purpose in the notice of the decision.

11 Monitoring of licences and licensees

For the purposes of examining a licensee's compliance with the Act, these Regulations and the conditions of the licensee's licence, the export efficiency body may, by notice, ask the licensee to give to it information specified in the notice about any 1 or more of the following matters:

- (a) the licensee's conduct as a licensee;
- (b) the licensee's financial arrangements;
- (c) if the licensee is a partnership — the names of the partners;
- (d) if the licensee is a corporation — its ownership and its management arrangements;
- (e) whether any of the following persons has become bankrupt, or has entered into an arrangement with creditors:
 - (i) the licensee;
 - (ii) if the licensee is a partnership — a partner;
 - (iii) if the licensee is a corporation — a director of, or a controlling shareholder in, the corporation;
- (f) whether, since the licence was issued, any of the following persons has been convicted of an offence against the Act or a dishonesty offence:
 - (i) if the licensee is an individual — the licensee;
 - (ii) if the licensee is a partnership — a partner;
 - (iii) if the licensee is a corporation — a director of, or a controlling shareholder in, the licensee.

Note It is a condition of a licence that information requested under this regulation is given to the export efficiency body within 28 days — see paragraph 8 (1) (h) of these Regulations.

12 Returns etc

- (1) For each calendar year, a licensee must, if the export efficiency body so requests in writing, give a written return to the export efficiency body setting out, for the year:
 - (a) the total quantity of each variety of each type of regulated horticultural product that the licensee has exported to a regulated horticultural market; and

- (b) the value of that quantity; and
 - (c) the average price per kilogram of that quantity.
- (2) A return for a year under subregulation (1) must be given to the export efficiency body no later than 31 January in the next year.
- (3) In relation to a consignment of a regulated horticultural product exported to a regulated export market, the export efficiency body may give to the licensee concerned a notice requiring the licensee to give to the export efficiency body, within a period (of at least 14 days) specified in the notice, a written return providing details of each of the following matters that the export efficiency body specifies in the notice:
 - (a) the total quantity of each variety of each type of horticultural product included in the consignment;
 - (b) the value of that total quantity;
 - (c) the country of import;
 - (d) the name of the purchaser;
 - (e) the name of the ship, or the identification of the aircraft, in which the consignment was exported;
 - (f) the day on which the consignment was exported;
 - (g) the rate of commission paid to the licensee;
 - (h) if the licence is subject to conditions in relation to:
 - (i) the kinds of horticultural products that may, or must not, be exported; or
 - (ii) the quality, colour, shape or size of horticultural products that may, or must not, be exported; or
 - (iii) the type of container or package in which horticultural products must, or must not, be exported; or
 - (iv) the number, or maximum or minimum number, of horticultural products that must be contained in a container or a package; or
 - (v) the manner in which horticultural products must, or must not, be labelled —sufficient information to show that the licensee has complied with those conditions;

- (i) the total weight of the consignment;
 - (j) the class of horticultural product exported;
 - (k) the State or Territory in which the horticultural product was grown;
 - (l) the place in Australia from which the horticultural product was exported;
 - (m) the final destination of the horticultural product;
 - (n) the intended port of discharge of the consignment;
 - (o) any other matter relating to the consignment.
- (4) For the purposes of subregulation (3), if parts of a consignment are exported in different ships or aircraft, the return must set out the information in relation to each part of the consignment.

Note It is a condition of a licence that the licensee provide each return required under subregulation (1) or (3) within the required period — see paragraph 8 (1) (i) of these Regulations.

13 Returns etc by former licensees

- (1) The export efficiency body may, by written notice given within 2 years after a person ceases to be a licensee, require the person to give to the body a return or information, specified in the notice, required by the body for the purposes of the Act.
- (2) The information must be about the person's activities authorised by the licence during the period of the licence.
- (3) The period within which a person must give a return under subregulation (1):
 - (a) must be specified in the notice; and
 - (b) must not be less than 28 days after the date of the notice.

14 Publication of information by export efficiency body

- (1) The export efficiency body may publish the following information about a licensee:
 - (a) the licensee's name, and registered business name if any;
 - (b) the licensee's business address, telephone number, facsimile number and email address;
 - (c) if the licensee is a partnership, the names of the members.

- (2) With the consent of a licensee, the export efficiency body may publish the following additional information about the licensee:
 - (a) the kinds of regulated horticultural products that the licensee is licensed to export;
 - (b) the conditions imposed on the licensee's licence;
 - (c) the kind of business undertaken by the licensee.
- (3) With the consent of a licensee, the export efficiency body may publish a copy of the licensee's licence.

15 Approval of export efficiency programs

The industry export control body may approve a program that is intended to organise, or to improve the efficiency of, the export of a regulated horticultural product (whether or not to a particular place) if:

- (a) a growers' organisation asks the industry export control body to approve it; and
- (b) the industry export control body has consulted with representatives of industry sectors likely to be affected by the approval of the program.

16 Review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of a decision:

- (a) not to grant a licence; or
- (b) not to renew a licence; or
- (c) to impose a condition (other than a condition contained in a published document) on a licence; or
- (d) to suspend or revoke a licence; or
- (e) to vary a licence under paragraph 10 (2) (b).

17 How notices may be given

- (1) A notice that must be given by the export efficiency body to a licensee may be sent to the licensee at the licensee's address shown on the licence document or to another address given by the licensee to the body for that purpose.
- (2) A notice that must be given by the export efficiency body to a person who is not a licensee may be sent to the person at the person's business or residential address last known to the body or to another address nominated by the person.

18 Australian Horticultural Corporation (Export Control) Regulations — repeal

The following Statutory Rules are repealed:

- 1990 No. 422
- 1991 No. 436
- 1996 No. 289.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 4 December 2002.