

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 235

Issued by the Authority of the Minister for Agriculture, Fisheries and Forestry

Imported Food Control Act 1992

Imported Food Control Amendment Regulations 2009 (No. 1)

Subsection 43(1) of the *Imported Food Control Act 1992* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 36(1) of the Act provides that a person for whom a chargeable service is provided is liable to pay to the Commonwealth the payable amount in respect of the provision of that service as is prescribed. Subsection 36(2) provides that the payable amount in respect of a particular service must not exceed the direct and indirect costs that are properly attributed to the provision of that service in accordance with ordinary commercial principles.

The *Imported Food Control Amendment Regulations 2009 (No. 1)* (the Amendment Regulations) amend the *Imported Food Control Regulations 1993* (the Regulations) to increase certain fees which have remained at their current levels since 2005.

Subregulation 33(1) of the Regulations provides that, for the purpose of section 36 of the Act, a person for whom there is provided a chargeable service referred to in column 2 of an item in Part 2 of Schedule 2 to the Regulations is liable to pay to the Commonwealth the amount, or an amount calculated at the rate, specified in column 3 of that item for the provision of that service and any additional fee imposed under subregulation 33(2).

Subregulation 33(2) of the Regulations provides that if a service is provided outside the officer's ordinary hours of duty, the amount liable to be paid is the amount calculated in accordance with the relevant item in Part 3 of Schedule 2.

The Amendment Regulations increase fees in Parts 2 and 3 of Schedule 2 of the Regulations. The fees are for chargeable services performed during ordinary hours of duty (Part 2) and out of ordinary hours of duty (Part 3).

The Australian Quarantine and Inspection Service (AQIS) operates under the Australian Government Cost Recovery Guidelines (2005). In accordance with the Cost Recovery Guidelines, the Import Clearance Program and the Imported Food Program reviewed their cost recovery arrangements in consultation with industry.

The Import Clearance Program, on behalf of the Imported Food Program, provides services for inspection and clearance of imported food. These services ensure food safety and compliance with Australian food standards. The revenue from the provision of these services is incorporated into the budget of the Import Clearance Program.

The Import Clearance Program has experienced a decrease in revenue since October 2008. This is due to the reduced number of goods, including food, being imported into Australia. The 2008–2009 financial year ended with a deficit of \$9.717 million, and the Import Clearance Program predicts that the 2009–2010 financial year will also end with a deficit. This prediction is based on mid-year budget reviews and industry data. The decline in goods being imported into Australia will impact on the Import Clearance Program’s Industry Liability Account (ILA). The purpose of the ILA account is to manage under and over recovery from one financial year to the next. The ILA cannot do this if the balance is in deficit. Due to the uncertainty of the current economic climate the Import Clearance Program has implemented a new fee structure, which will result in an appropriate balance being established in the ILA account.

The fee structure also reflects an increase in overall costs for the Import Clearance Program. The increase in fees is required to recover the direct and indirect costs of providing food safety and compliance inspection related services on imported food. The direct costs of providing services are primarily labour costs. The indirect costs of providing services include financial services, human resource services, information technology services and other general overheads.

Although there is a decline in goods being imported into Australia, staff numbers for the Import Clearance Program and Imported Food Program will generally remain the same over the next financial year. Staff resources will be redirected to review instructional material, training resources and verification activity, including review of existing import profiles and surveys. Staff will also be redirected to implement a risk-return approach, which involves realigning regulatory focus with assessed risk. These activities are in line with recommendations 77 and 44 of the report by Roger Beale AO: *One Biosecurity: A Working Partnership* (September, 2008) (the Beale Report).

The Beale Report is the outcome of an independent review of Australia’s quarantine and biosecurity arrangements that was commissioned by the Australian Government in early 2008. The purpose of the review was to identify how Australia’s quarantine and biosecurity arrangements could be improved.

The Import Clearance Program consulted with the AQIS Industry Cargo Consultative Committee (AICCC) on the fee increases. The AICCC was established in 1993 to act as the peak industry consultative group between AQIS and the cargo handling/importing industry on all operational, policy, efficiency and strategic issues.

Membership of the AQIS Industry Cargo Consultative Committee comprises of representatives from key industry sectors including:

- Industry Working Group on Quarantine (IWGQ)
 - Regional Cargo Facilitation Committees/Councils
 - Shipping Lines
 - Stevedoring/Container Terminal and Depot Operators
 - Customs Brokers
 - Air/Sea Freight Forwarders
 - Importers/Cargo Operators
 - Airlines/Cargo Terminal Operators
 - Air Express Operators/Couriers

A Regulation Impact Statement was not required because the amendments will have a low impact on business and will impose no or low compliance costs.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Amendment Regulations are set out below:

Regulation 1 specifies the name of the amending Regulations as the *Imported Food Control Amendment Regulations 2009 (No. 1)*.

Regulation 2 provides that the amending Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 provides that Schedule 1 amends the *Imported Food Control Regulations 1993*.

Regulation 4 provides when the amendments made by Schedule 1 apply.

Subregulations 4(1), 4(2) and 4(3) provide that if a person pays to the Commonwealth the payable amount for the provision of a chargeable service that is provided after the amendments commence, that person is not liable to pay any further amount under section 36 of the *Imported Food Control Act 1992*. However, if a person pays to the Commonwealth the payable amount for the provision of a chargeable service that is provided after the amendment commences and outside ordinary hours of duty, that person will be liable for the fees required by paragraph 33(1) (b) of the *Imported Food Control Regulations 1993* as in force after the amendments in Schedule 1 commence.

Subregulation 4(4) provides that if a person is provided with a chargeable service before the amendments commence, but has not paid to the Commonwealth the payable amount for the provision of the service, that person is only liable to pay the payable amount specified by regulation 33 of the *Imported Food Control Regulations 1993* as in force at the time the service was provided.

Schedule 1 – Amendments

Item [1] amends item 1 in Part 2 of Schedule 2 by increasing the fee for one working day inspecting food in paragraph (a) in column 3 from \$714 to \$900. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [2] amends item 1 in Part 2 of Schedule 2 by increasing the fee for the first half hour, or part of a half hour, inspecting food in subparagraph (b) (i) in column 3 from \$80 to \$90. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [3] amends item 1 in Part 2 of Schedule 2 by increasing the fee for each quarter hour, or part of a quarter hour, after the first half hour inspecting food in subparagraph (b) (ii) in column 3 from \$40 to \$45. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [4] omits and substitutes a new fee description in column 3 of item 2 in Part 2 of Schedule 2. The effect of the amendment is to set a new fee structure for the assessment of information in an entry relating to a consignment of food for which there is a relevant foreign government certificate. The amendment sets a fee of \$40 for the first half hour, or part of a half hour, of an assessment of an entry that is based only on the information in the entry. If the assessment takes longer than a half hour an additional fee of \$40 is imposed for each quarter hour, or part of a quarter hour. In addition the amendment imposes a fee of \$40 if the officer performing the assessment requires additional information. The new time based fees more accurately recover the costs associated with assessment of entries. The increased fees are required to recover the direct and indirect costs of providing the service.

Item [5] omits and substitutes paragraph (a) in column 3 in Part 2 of Schedule 2. The effect of the amendment is to set a new fee structure for the assessment of information in an entry relating to a consignment of food. The amendment sets a fee of \$40 for the first half hour, or part of a half hour, of an assessment of an entry that is based only on the information in the entry. If the assessment takes longer than a half hour an additional fee of \$40 is imposed for each quarter hour, or part of a quarter hour. The new time based fees more accurately recover the costs associated with assessment of entries. The increased fees are required to recover the direct and indirect costs of providing the service.

Item [6] amends item 3 in Part 2 of Schedule 2 by increasing the fee for assessment of additional information for an entry relating to a consignment of food in paragraph (b) in column 3 from \$27 to \$40. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [7] amends item 4 in Part 2 of Schedule 2 by increasing the fee for supervising treatment, destruction or re-exportation of food for the first half hour, or part of a half hour, in paragraph (a) of column 3 from \$80 to \$90. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [8] amends item 4 in Part 2 of Schedule 2 by increasing the fee for supervising treatment, destruction or re-exportation of food for each quarter hour, or part of a quarter hour, after the first half hour, in paragraph (b) in column 3 from \$40 to \$45. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [9] amends column 2 of item 5 in Part 3 of Schedule 2 by omitting the words 'Part 1' and substituting them with 'Part 2'. This corrects a typographical error.

Item [10] amends item 5 in Part 3 of Schedule 2 by increasing the fee in paragraph (a) in column 3 from \$10 to \$16. The fee is for performance of a service outside ordinary hours of duty, which is performed immediately before or after duties performed during ordinary hours. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [11] amends item 5 in Part 3 of Schedule 2 by increasing the fee in subparagraph (b) (i) in column 3 from \$120 to \$192. The fee is for the performance of a service outside ordinary hours of duty for any period up to 3 hours. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [12] amends item 5 in Part 3 of Schedule 2 by increasing the fee in subparagraph (b) (ii) from \$10 to \$16. The fee is for the performance of a service outside ordinary hours of duty for each quarter hour, or part of a quarter hour, after the initial 3 hour period. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [13] amends column 3 of item 6 in Part 3 of Schedule 2, by omitting the word ‘Saturday’ and substituting it with the words ‘Saturday, Sunday or AQIS holiday’. This reflects the omission of items 7 and 8 from Part 3 of Schedule 2, which previously set out the fees that applied if an officer is required to perform services on a Sunday or AQIS holiday (see Item 16 of the amending Regulations). The effect of the amendment is to create one item that sets out fees that can apply on either a Saturday, Sunday or AQIS holiday. Recommendation 76 of the Beale Report stated that fees for like activities should be aggregated to reduce the number of individual charges. In line with this recommendation the cost of providing services mentioned in Part 2 of Schedule 2 on a Saturday, Sunday or AQIS holiday will be recovered through the fees set out in item 6.

Item [14] amends item 6 in Part 3 of Schedule 2 by increasing the fee for an officer performing a service on a Saturday, Sunday or AQIS holiday for any period up to 3 hours in paragraph (a) in column 3 from \$120 to \$288. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [15] amends item 6 in Part 3 of Schedule 2 by increasing the fee for an officer performing a service on a Saturday, Sunday or AQIS holiday for each quarter hour, or part of a quarter hour, after the initial 3 hour period in paragraph (b) in column 3 from \$10 to \$24. The increased fee is required to recover the direct and indirect costs of providing the service.

Item [16] omits items 7 and 8 from Part 3 of Schedule 2. This reflects the amendment made to item 6 in Part 3 of Schedule 2, which sets out the fees that apply on either a Saturday, Sunday or AQIS holiday (see Item 13 of the amending Regulations).