

EXPLANATORY STATEMENT

Select Legislative Instruments No. 201, 2015

Issued by Authority of the Minister for Agriculture and Water Resources

*Australian Meat and Livestock Industry Act 1997,
Dairy Produce Act 1986*

*Australian Meat and Live-stock and Dairy Legislation Amendment (Cost Recovery)
Regulation 2015*

Legislative Authority

Section 74 of the *Australian Meat and Livestock Industry Act 1997* (AMLI Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 126 of the *Dairy Produce Act 1986* (Dairy Produce Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. This includes the making of regulations that require producers, manufacturers, purchasers and exporters to keep and produce records in relation to dairy produce.

Purpose

The *Australian Meat and Live-stock and Dairy Legislation Amendment (Cost Recovery) Regulation 2015* (the Amendment Regulation) amends the *Australian Meat and Live-stock Industry (Export Licensing) Regulation 1998* (the Export Licensing Regulation) and the *Dairy Produce Regulation 1986* (the Dairy Produce Regulation).

The purpose of the Amendment Regulation is to amend application fees for meat and live-stock export licences, fees for the allocation of quota and fees for the issue of export approvals for dairy produce.

The Amendment Regulation assists in the implementation of the redesign of fees and charges and ensures consistency of fees and charges for licences and quota export services under the Export Licensing Regulation and the Dairy Produce Regulation with fees and charges for licences and quota export services under the *Export Control (Fees) Order 2015* and the *Export Charges (Imposition—General) Act 2015* or the *Export Charges (Imposition—Customs) Act 2015*.

Background

The export of certain goods, such as meat, seafood, dairy, plants, non-prescribed goods such as honey and wool and live animals is managed under the *Export Control Act 1982* and the AMLI Act. These Acts and other related legislation provide the basis for ensuring that these goods meet the requirements of importing countries.

The Dairy Produce Act regulates the marketing and export of dairy produce to regulated dairy markets. The European Union and the United States of America are two regulated dairy markets which are managed through a quota allocation system.

The department monitors operational policy and manages systems to ensure compliance with Australian export controls and importing country requirements. This is achieved by undertaking inspection, certification, approval and licencing activities. These activities serve to maintain the eligibility of commodities for export from Australia and ensure that market access is maintained. The department also issues permits, health certification and other documentation necessary to confirm compliance for importing countries.

Monitoring compliance with export legislation comes at a cost. The *Australian Government Cost Recovery Guidelines* state that agencies should set charges to recover some or all the costs of activities that they provide.

The policy authority for continued cost recovery of export services was confirmed in the 2015–16 Budget when the Commonwealth announced the redesign of the department's cost recovery arrangements. The redesign improves the department's cost recovery arrangements so they are financially sustainable and support the efficient and effective delivery of export services into the future. The redesign improves the cost recovery of export services by:

- recovering the full costs of services undertaken by the department
- simplifying the structure of fees and charges
- achieving greater equity in client contributions to system costs.

Impact and Effect

The Amendment Regulation provides for minor amendments to the Export Licensing Regulation to prescribe a nil licence application fee to meat export licences and live-stock export licences. The costs associated with export licensing will instead be recovered as a charge under the *Export Charges (Imposition—General) Act 2015* or the *Export Charges (Imposition—Customs) Act 2015*.

The Amendment Regulation also provides for minor amendments to the Dairy Produce Regulation to implement the redesigned fee structure for quota management by removing the quantity based quota fee and replacing it with a per approval fee.

Consultation

The department consulted with stakeholders during the development of the redesigned cost recovery fees and charges. This included the department working with all export-related industry consultative committees and other clients and interested stakeholders through public engagement forums. The department released draft Cost Recovery Implementation Statements (CRISs) for public comment and provided opportunity for stakeholders to provide feedback through a submissions process.

Stakeholder feedback was taken into account and the final CRISs was certified by the Secretary of the department and endorsed by the Minister for Agriculture and Water Resources. The Minister for Finance agreed to release the final CRISs which is available on the department's website.

The Amendment Regulation is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment A.

A Regulatory Impact Statement (RIS) was completed on the department's quarantine, imported food and export certification cost recovery redesign (Office of Best Practice Regulation ID: 17726). OBPR assessed the RIS as best practice. A copy of the RIS is attached.

The Amendment Regulation is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

Details of the *Australian Meat and Live-stock and Dairy Legislation Amendment (Cost Recovery) Regulation 2015*

Section 1 – Name

This section provides that the name of the Amendment Regulation is the *Australian Meat and Live-stock and Dairy Legislation Amendment (Cost Recovery) Regulation 2015*.

Section 2 – Commencement

This section provides for the Amendment Regulation to commence on the 1 December 2015.

Section 3 – Authority

This section provides for the Amendment Regulation to be made under the *Australian Meat and Livestock Industry Act 1997* (AMLI Act) and the *Dairy Produce Act 1986* (Dairy Produce Act)

Section 4 – Schedules

This section provides that each instrument specified in a schedule to the Amendment Regulation is amended or repealed as set out in the applicable Schedule.

Schedule 1 - Amendments

Australian Meat and Live-stock Industry (Export Licencing) Regulations 1998

Item 1 repeals subregulation 6(7). Repealing this subregulation removes the requirement for an application fee to be paid in relation to an application for a meat export licence before an application is taken to have been made.

Item 2 repeals subregulations 7(2) and (4) and substitutes a new provision. Subregulation 7(2) specifies the fee for a meat export licence is \$500. The substituted provision specifies that the application fee is nil. As a consequence, the exemption from the fee provided for in subregulation 7(4) is not required.

Item 3 repeals subregulation 14(5) and substitutes a new subregulation 14(5) which specifies that an application for a live-stock export licence is not taken to have been made until the charge applicable under the *Export Charges (Imposition—General) Regulation 2015* or the *Export Charges (Imposition—Customs) Regulation 2015* is paid.

Item 4 repeals subregulation 15(1), (2) and (3) and substitutes a provision that specifies the fee relating to an application for a live-stock export licence is nil. In place of these fees, an application charge will be imposed under the *Export Charges (Imposition—General) Regulation 2015* and the *Export Charges (Imposition—Customs) Regulation 2015*.

Item 5 repeals subregulation 19(4). This is a technical amendment as **Item 4** above repeals the paragraphs to which this subregulation relates.

Item 6 adds a new 'Part 5—Application and transitional provisions' at the end of the regulations.

Subregulations 28(1) in relation to meat export licences and 28(2) in relation to live-stock export licences mean that the amendments made by this regulation will apply in relation to applications for the respective licences made on or after 1 December 2015.

Regulation 29 repeals Part 5 at the start of 1 July 2016.

Dairy Produce Regulations 1986

Item 7 repeals the definition of 'AQIS' from subsection 2(1) as this definition is no longer required.

Item 8 repeals the definition of 'Department' from subsection 2(1) as this definition is no longer required.

Item 9 repeals regulation 2.07 which sets a method for calculating fees payable by reference to the quantity of quota. This provision is no longer required as the fees are being replaced with the fees set out in **Item 28**.

Item 10 omits the words 'shipped; and' and substitutes 'shipped' in subparagraph 2.08(4)(b)(vi). This is a technical amendment as a consequence of **Item 11** which removes paragraph 2.08(4)(c).

Item 11 repeals paragraph 2.08(4)(c) removing the requirement to pay an application fee in relation to an application for an annual quota.

Item 12 omits 'Note 1' and substitutes 'Note' into subregulation 2.10(6). This is a technical amendment as a consequence of **Item 13** repealing Note 2.

Item 13 repeals subregulation 2.10(6) (note 2). This is a technical amendment as a result of **Item 15** which repeals regulation 2.14 to which note 2 refers.

Item 14 repeals paragraphs 2.12(2)(c) and (d). **Item 15** repeals regulation 2.13, removing the requirement for the payment of a fee in relation to the allocation of annual quota to which paragraphs 2.12(2)(c) and (d) refer.

Item 15 repeals regulations 2.13 and 2.14. Regulation 2.13 is no longer required as there will no longer be a fee payable on the quantity of allocated annual quota. This fee is being replaced with the fees set out in **Item 28**. Regulation 2.14 is no longer required as paragraph

2.08(4)(c) which sets out the requirement to pay an application fee for an application for an annual quota has been repealed (refer to **Item 11**).

Item 16 repeals paragraph 2.19(3)(b) and substitutes a new paragraph 2.19(3)(b). This provision changes the circumstances in which a penalty on a future allocation of quota may be imposed on a dairy manufacturer if an annual quota of less than 3000 tonnes is unused. This change is required as a result of the repeal of regulation 2.13.

Item 17 repeals paragraph in 2.19(4)(b) and substitutes a new paragraph 2.19(4)(b). This provision changes the circumstances in which a penalty on a future allocation of quota may be imposed on a dairy manufacturer if an annual quota of at least 3000 tonnes is unused. This change is required as a result of the repeal of regulation 2.13.

Item 18 omits ‘for; and’ and substitutes ‘for’ into subparagraph 2.20(3)(b)(vi). This is a technical amendment as a consequence of **Item 19**.

Item 19 repeals paragraph 2.20(3)(c) removing the requirement for the payment of a fee in relation to an application for first-come-first-served (FCFS) quota.

Item 20 repeals paragraph 2.21(3)(b) and substitutes a new paragraph 2.21(3)(b). This paragraph is no longer required as there will be no application fee for FCFS quota to refund. New paragraph 2.21(3)(b) makes it clear that the Secretary has the discretion not to allocate unallocated quota to the applicant.

Item 21 repeals subregulation 2.21(4). This removes the requirement for the Secretary to notify an applicant that there is no unallocated FCFS quota. **Item 19** repeals the application fees for FCFS quota referred to in subregulation 2.21(4). As a result, this subregulation providing for the refund of that fee is not required.

Item 22 omits ‘decision; and’ and substitutes ‘decision’ into paragraph 2.21(6)(b). This is a technical amendment as a consequence of **Item 23** which repeals subparagraph 2.21(6)(c) which provides for the refund of an application fee.

Item 23 repeals paragraph 2.21(6)(c). **Item 19** repeals the application fee referred to in subparagraph 2.21(6)(c). As a result, this subregulation providing for the refund of that fee is not required.

Item 24 repeals paragraph 2.22(2)(c) removing the requirement to include in the notification of an allocation of FCFS quota, the fee that must be paid. **Item 25** repeals regulation 2.23 which provides for the fee to which paragraph 2.22(2)(c) refers.

Item 25 repeals regulation 2.23 for the payment of a fee for the allocated FCFS quota. This fee is being replaced with the fees set out in **Item 28**.

Item 26 repeals the definition of ‘consignment quota’ from regulation 2.26 as this definition is no longer relevant.

Item 27 repeals the definition of ‘exporter’s available quota’ in regulation 2.26 and substitutes it with a new definition. This is to enable a consistent use of the definitions for annual quota and FCFS quota. It also clarifies that an exporter’s available quota is the sum of the unattached annual quota and unattached FCFS quota.

Item 28 adds new provisions onto the end of regulation 2.27. Subregulation 2.27(4) establishes fees which will apply to applications for approval to export a consignment of regulated dairy produce to the European Union. Subregulation 2.27(5) specifies that a fee payable under subregulation 2.27(4) is due and payable when a demand for payment is made.

Subregulation 2.27(6) provides for the waiver or remission of fees if the Secretary considers it appropriate to do so. Subregulation 2.27(7) provides that the decision to waive or remit all or part of a fee may be done on the Secretary’s own initiative or on written application by a person.

Item 29 omits the (1) from subregulation 2.28(1). This is a technical amendment as **Item 32** repeals subregulation 2.28(2) from regulation 2.28.

Item 30 inserts a new paragraph 2.28(aa) after paragraph 2.28(1)(a). The effect of this provision is that the fees required in relation to an application under regulation 2.27 (**Item 28**) must be paid prior to an approval for export being granted.

Item 31 omits the words ‘and the exporter has paid the fee set out in subregulation (2) to attach quota to the consignment’ from subparagraph 2.28(1)(b)(ii). This is an amendment to reflect this fee being removed by **Items 30** and **Item 32**.

Item 32 repeals subregulation 2.28(2). This regulation is no longer required as the requirement to pay a fee based on the quantity of quota has been removed in 2.28(1)(b)(ii). This fee is being replaced with the fees set out in amendment **Item 35**.

Item 33 repeals the definition of ‘consignment quota’ from regulation 2.33 as this definition is no longer relevant.

Item 34 repeals the definition of ‘exporter’s available quota’ and substitutes a new definition that has the same meaning as in subdivision 2.5.1. This amendment ensures consistency of definitions in the Regulation.

Item 35 adds new provisions onto the end of regulation 2.34. Subregulation 2.34(4) establishes fees which will apply to applications for approval to export a consignment of regulated dairy produce to the United States of America. Subregulation 2.34(5) specifies that

a fee payable under subregulation 2.34(4) is due and payable when a demand for payment is made.

Subregulation 2.34(6) provides for the waiver or remission of fees if the Secretary considers it appropriate to do so. Subregulation 2.34(7) provides that the decision to waive or remit all or part of a fee may be done on the Secretary's own initiative or on written application by a person.

Item 36 omits the (1) from subregulation 2.35(1). This is a technical amendment as **Item 39** repeals subregulation 2.35(2) from regulation 2.35.

Item 37 inserts a new paragraph 2.35(aa) after paragraph 2.35(1)(a). The effect of this provision is that the fees required in relation to an application under regulation 2.34 (**Item 35**) must be paid prior to an approval for export being granted.

Item 38 omits the words 'and the exporter has paid the fee set out in subregulation (2) to attach quota to the consignment' from subparagraph 2.35(1)(b)(ii). This amendment reflects the changes made by amending **Item 37** and **Item 39**.

Item 39 repeals subregulation 2.35(2). This regulation is no longer required as the requirement to pay a fee based on the quantity of quota has been removed. This fee is being replaced by the fee established by **Item 35**.

Item 40 inserts 'Division 2.7—Application and transitional provisions' at the end of Part 2.

Regulation 2.43 provides for transitional provisions for allocations of annual quota.

Subregulation 2.43(1) provides that amendments to regulations 2.07 and 2.08 will apply to an application for the allocation of annual quota that is made on or after 1 December 2015.

Subregulation 2.43(2) provides that amendments to regulations 2.12 and 2.13 will apply in relation to an allocation of annual quota that occurs on or after 1 December 2015.

Subregulation 2.43(3) provides that despite the repeal of regulation 2.14, which provides for a refund of application fees to dairy manufacturers who are not allocated any annual quota, the regulation will continue to apply for the calendar year beginning 1 January 2016 for those who paid an application fee prior to 1 December 2015 if the dairy manufacturer is not allocated any annual quota under regulation 2.10.

Regulation 2.44 has the equivalent effect as regulation 2.43, but in relation to the amendments to regulations dealing with FCFS quota rather than annual quota.

Regulation 2.45 provides that the amendments to regulations 2.26, 2.27 and 2.28 which provide new provisions relating to the imposition, waiver and remissions of fees for applications for approval to export regulated dairy produce to the European Union will apply

if the quota relating to the consignment was allocated for a calendar year beginning on or after 1 January 2016.

Regulation 2.46 has the equivalent effect as regulation 2.45, but in relation to an application for approval to export to the United States of America rather than the European Union.

Regulation 2.47 will repeal Division 2.7 at the start of 1 July 2016.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Australian Meat and Live-stock and Dairy Legislation Amendment (Cost Recovery) Regulation 2015

This Legislative Instrument 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*.

Overview of the Legislative Instrument

The *Australian Meat and Live-stock and Dairy Legislation Amendment (Cost Recovery) Regulation 2015* (the Amendment Regulation) amends the *Australian Meat and Live-stock Industry (Export Licensing) Regulation 1998* (the export licensing regulation) and the *Dairy Produce Regulation 1986* (the dairy produce regulation).

The purpose of the Amendment Regulation is to amend fees for meat and livestock export licences and for the allocation of quota and issue of export approvals for dairy produce.

The Amendment Regulation assist in the implementation of the redesign of fees and charges and ensure consistency of fees and charges for licences and quota export services under the export licensing regulation and the dairy produce regulation with fees and charges for licences and quota export services under the *Export Control Fees Order 2001* and the *Export Charges (Imposition—General) Act 2015* or the *Export Charges (Imposition—Customs) Act 2015*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Barnaby Joyce MP
Minister for Agriculture and Water Resources