

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 192, 2015**

Issued by Authority of the Minister for Agriculture and Water Resources

*Imported Food Charges (Imposition—Customs) Act 2015*

*Imported Food Charges (Imposition—Customs) Regulation 2015*

#### **Legislative Authority**

Section 10 of the *Imported Food Charges (Imposition—Customs) Act 2015* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or that are necessary or convenient to be prescribed for the purpose of the Act.

Subsections 6(1) and 6(4) of the Act provide that a regulation may prescribe a charge in relation to a prescribed matter connected with the administration of the *Imported Food Control Act 1992* (Imported Food Control Act), but only so far as that charge is considered a duty of customs within the meaning of section 55 of the Constitution. Subsections 6(2) and 6(3) of the Act also provide that the charges prescribed under subsection 6(1) are imposed as taxes and that two or more charges may be prescribed in relation to the same matter, and a single charge may be prescribed in relation to 2 or more matters.

Subsection 7(1) of the Act provides that a regulation may prescribe a charge under subsection 6(1) by specifying an amount of a charge or the method for calculating the amount of a charge. Before the Governor-General may make a regulation under subsection 6(1) the Act requires that the Minister for Agriculture and Water Resources must be satisfied that the amount of the charge is set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the matter.

Section 8 of the Act provides that a regulation may prescribe one or more persons who are liable to pay a specified charge prescribed under sub-section 6(1). Section 9 of the Act provides that a regulation may be made to provide exemptions from a charge prescribed under subsection 6(1).

#### **Purpose**

The purpose of the *Imported Food Charges (Imposition—Customs) Regulation 2015* (the Regulation) is to prescribe new charges in relation to various prescribed matters connected with the administration of the Imported Food Control Act and which are considered a duty of customs within the meaning of section 55 of the Constitution. The Regulation also prescribes who is liable to pay a specified charge, the persons or classes of persons that are exempt from a charge and makes transitional provisions for any such charges.

The Regulation gives effect to the new imported food cost recovery charges developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

## **Background**

The importation of food is managed under the Imported Food Control Act and related delegated legislation. The Imported Food Control Act provides for the management of food entering Australia to ensure compliance with Australian food standards and the requirements of public health and safety. The volume of food imports continues to grow, as does the range of imported foods and the complexity of the supply chains used by Australian food importers. These and many other factors all contribute to the complexity of managing the standards of imported food.

Monitoring compliance with the arrangements under the Imported Food Control Act 1992 comes at a cost. The *Australian Government Cost Recovery Guidelines* state that agencies should recover some or all the costs of activities that they provide.

The policy authority for continued cost recovery of imported food activities was confirmed in the 2015–16 Budget when the Australian Government 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 imported food activities into the future. This redesign improves the cost recovery arrangements for imported food services by:

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

In June 2015, a suite of new charging legislation for which the department is responsible commenced. This includes the Act, the *Imported Food Charges (Collection) Act 2015*, the *Imported Food Charges (Imposition—General) Act 2015* and *Imported Food Charges (Imposition—Excise) Act 2015*. This new suite of charging legislation provides an appropriate legal framework for the recovery of different types of costs through the imposition and collection of charges, rather than fees.

From 1 December 2015 the Regulation will operate alongside the legislative framework for cost recovering through fees where a service is provided directly to an individual or business or organisation. These fees are contained within the *Imported Food Control Amendment (Fees) Regulation 2015*.

## **Impact and Effect**

The Regulation will allow the Commonwealth to appropriately recover the costs for providing services in respect of various imported food related matters by imposing charges which are considered customs duties within the meaning of section 55 of the Constitution. The Regulation will improve and implement part of the department's redesigned cost recovery arrangement for imported food services, including through:

- the recovery of costs through the imposition of charges, as cost recovery levies, rather than as fees
- standardisation of charges for services such as approval and annual registration charges for compliance agreements with other similar approvals given under the *Quarantine Act 1908*.

## **Consultation**

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

Stakeholder feedback was taken into account and the final CRIS 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 CRIS which is available on the department's website.

The 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.

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

## **Details of the *Imported Food Charges (Imposition—Customs) Regulation 2015***

### **Section 1 – Name**

This section provides that the name of the Regulation is the *Imported Food Charges (Imposition—Customs) Regulation 2015*.

### **Section 2 – Commencement**

This section provides that the Regulation will commence on 1 December 2015.

### **Section 3 – Authority**

This section provides that this Regulation is made under the *Imported Food Charges (Imposition—Customs) Act 2015*.

### **Section 4 – Simplified outline of this instrument**

This section sets out a simplified outline of the Regulation which states that the regulation prescribes charges in relation to certain matters connected with the administration of the Imported Food Control Act; the persons liable to pay and exemptions from charges.

It also notes that the prescribed charges are imposed under the Act as taxes. Section 55 of the Constitution relevantly requires that laws imposing duties of customs deal with duties of customs only, and laws imposing duties of excise deal with duties of excise only. Section 55 also has the effect that laws imposing ‘general’ taxation (that is, taxes that are neither customs or excise duties) may not impose duties of customs or excise.

The third paragraph of the simplified outline in this section notes that this Regulation prescribes a charge only so far as it is a duty of customs within the meaning of section 55 of the Constitution. It also notes that to the extent a charge is neither a duty of customs nor of excise, it is prescribed under the *Imported Food Charges (Imposition—General) Regulation 2015* (it is unlikely the charges are duties of excise).

The charges listed in this Regulation are also listed in the *Imported Food Charges (Imposition—General) Regulation 2015*. This ensures that a charge is validly imposed under the relevant Act even where it is unclear whether it is a duty of customs or a ‘general’ tax (ie neither a duty of customs nor a duty of excise).

### **Section 5 – Definitions**

This section provides definitions of the terms *Act*, *compliance agreement* and *imported food matter* which are used in this Regulation. This ensures the meaning of these terms is clear.

## **Part 2 - Charges**

### Section 6 – Charges for imported food matters

Section 6 prescribes the amount of charges payable in relation to imported food matters connected with the administration of the *Imported Food Control Act 1992*.

There are two prescribed matters that attract a charge under the Regulation; an application charge for a compliance agreement, and an annual charge (per financial year) for development and management of arrangements for the performance of activities by a person on behalf of the Commonwealth in accordance with a compliance agreement.

There are separate charges for compliance agreements entered into on or before, or after, 1 January in a financial year. This reflects the arrangement in place for the collection of the charges relating to the approval of places (quarantine approved premises) and compliance agreements entered into under the *Quarantine Act 1908*.

### Section 7 – Persons liable to pay charges

Section 7 prescribes who is liable to pay a charge in relation to an imported food matter prescribed by section 6 of the Regulation.

In relation to the charge for an application to enter into a compliance agreement, the person liable to pay the charge for the application is the person who made the application. For charges in relation to the development and management of arrangements in accordance with a compliance agreement, the person liable is the person with whom the Commonwealth has entered into a compliance agreement.

The note to section 7 refers to provisions in the *Imported Food Charges (Collection) Regulation 2015* which provide that the agent of a person who is liable to pay a charge is jointly and severally liable with that person to pay the charge.

### Section 8 – Exemption from charges

Section 8 prescribes circumstances in which a person is exempt from paying a charge. Subsection 8(1) provides that a person is not liable to pay the application charge if the person is a party to another imported food compliance agreement or where a person is party to a compliance agreement or a holder of an approval of a quarantine approved premises under the *Quarantine Act 1908*.

Subsection 8(2) provides for an exemption from the annual charge if the persons entering into a compliance agreement has paid a charge (either under this Regulation or the *Imported Food Charges (Imposition—General) Regulation 2015*) for the same period in relation to another compliance agreement. An exemption also applies where a person has paid an equivalent charge in relation to a compliance agreement or the approval of quarantine approved premises (items 13 and 15, respectively, of the table in section 6 of the *Quarantine Charges*

*(Imposition—Customs) Regulation 2014 and the Quarantine Charges (Imposition—General) Regulation 2015).*

The exemptions in subsections 8(1) and 8(2) reflect the cost to the department to develop and manage the approval of imported food compliance agreements, quarantine premises and compliance agreements at the entity level rather than in relation to each approval or agreement. In circumstances where a person has already entered into an agreement or is an approval holder, the department does not incur the same development and management costs when considering subsequent applications, giving of approvals or entering into an agreement as it did on the first occasion.

### **Part 3 – Application and transitional provisions**

#### Section 9 – Transitional provisions relating to new charges

Subsection 9(1) provides that the charge for an application to enter into a compliance agreement applies from 1 December 2015.

Subsection 9(2) provides that if a person was liable to pay the charge in item 2 of the table in section 6 in the 2015-16 financial year and has paid the fee referred to in item 6 of Part 2 of Schedule 2 of the *Imported Food Control Regulations 1993*, as in force immediately before 1 December 2015, the person is not liable to pay the new charge until the 2016-17 financial year.

Subsection 9(3) applies the charge of \$1450 (item 2 of the table in section 6) that would otherwise be payable for an approval or renewal of an approval given after 1 January 2016 and ending on 30 June 2016, to an approval or renewal of an approval due on or after 1 December 2015. This provision reduces the liability of a person who obtains an approval in this period from \$2 900 to \$1 450.

#### Section 10 – Repeal of this Part

Section 10 provides that this part will be repealed on 1 July 2016 as it is no longer applicable.

## **Statement of Compatibility with Human Rights**

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

### ***Imported Food Charges (Imposition—Customs) 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 purpose of the *Imported Food Charges (Imposition—Customs) Regulation 2015* (the Regulation) is to prescribe new charges in relation to various prescribed matters connected with the administration of the *Imported Food Control Act 1992* and which are considered a duty of customs within the meaning of section 55 of the Constitution. The Regulation also prescribes who is liable to pay a specified charge, the persons or classes of persons that are exempt from a charge and makes transitional provisions for any such charges.

The Regulation gives effect to the new imported food cost recovery charges developed as part of the Department of Agriculture and Water Resources' redesign of cost recovery arrangements.

#### **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**