

EXPLANATORY STATEMENT

Select Legislative Instrument No. 193, 2015

Issued by Authority of the Minister for Agriculture and Water Resources

Imported Food Control Act 1992

Imported Food Control Amendment (Fees) Regulation 2015

Legislative Authority

Section 43 of the *Imported Food Control Act 1992* (the Act) allows the Governor-General to make regulations on a range of matters, including 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.

Subsection 36(1) of the Act provides that a person for whom a chargeable service is provided is liable to pay the Commonwealth that amount in relation to a service which is prescribed.

Subsection 36(2) of the Act provides that a fee in respect of a service must not exceed the direct and indirect costs that are properly attributed to the provision of that service, calculated in accordance with ordinary commercial principles.

Subsection 36(4) of the Act provides that, if the analysis of food is arranged and paid for by an authorised officer, the person for whom that chargeable service is arranged must reimburse the Commonwealth within a prescribed period.

Subsection 36(11) of the Act specifies the chargeable services to which a fee may apply. It also provides that the regulations may prescribe other services that are chargeable services.

Purpose

The purpose of the *Imported Food Control Amendment (Fees) Regulation 2015* (the Amendment Regulation) is to amend the prescribed fees for chargeable services, provide for waivers from these fees and for application and transitional provisions in the *Imported Food Control Regulations 1993* (the Regulation).

The Amendment Regulation gives effect to the new imported food cost recovery fees 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 Act and related delegated legislation. The Act provides for the management of food entering Australia ensuring the compliance of imported food with Australian food standards and the requirements of public health and safety. As the volume of food imports continues to grow, so 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 Act comes at a cost. The *Australian Government Cost Recovery Guidelines* state that agencies should recover some or all of the costs of activities that they provide.

Historically, the department has recovered the cost of its key imported food services provided to a person (for example, inspection, analysis, treatment and destruction) through fees imposed in the Regulation. Cost recovery fees that apply to those services provided directly to an individual or business or organisation will continue to be imposed under the Regulation.

The policy authority for continued cost recovery of imported food services 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 services into the future. The redesign improves the cost recovery of imported food services by:

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

The *Imported Food Charges (Collection) Act 2015* along with the *Imported Food Charges (Imposition—Customs) Act 2015*, *Imported Food Charges (Imposition—General) Act 2015* and *Imported Food Charges (Imposition—Excise) Act 2015* commenced in June 2015. This legislation provides the appropriate legal structure for the recovery of costs through the imposition of charges as a cost recovery levy, rather than a fee. The Regulation operates alongside this legislative framework.

Impact and Effect

The Regulation, as amended by the Amendment Regulation, will allow the Commonwealth to appropriately recover the costs for and in connection with providing chargeable services to users of the imported food system. The Amendment Regulation will improve and implement part of the department's redesigned cost recovery framework for imported food services, including through:

- standardised in-office and out-of-office fees for services provided across all imported food related services (such as inspections and assessments)

- standardised fees for services provided outside ordinary hours of duty across all imported food related services (such as weekends and public holidays).

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 CRIS 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 biosecurity, 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 *Imported Food Control Amendment (Fees) Regulation 2015*

Section 1 – Name

This section provides that the name of the Amendment Regulation is the *Imported Food Control Amendment (Fees) Regulation 2015*.

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Imported Food Control Act 1992*.

Section 4 – Schedules

This section provides that each instrument specified in Schedule 1 to the Amendment Regulation is amended or repealed as set out in the Schedule.

Schedule 1 – Amendments

Item 1 omits “(1)” from subregulation 3(1). This is a technical amendment to remove the subregulation reference as there are no other subregulation in regulation 3.

Item 2 inserts definitions of the terms *Departmental holiday*, *in-office*, *ordinary hours of duty*, *out-of-office*, *weekday* and *working day* into subregulation 3(1). This ensures the meanings of these terms is clear.

Item 3 repeals the existing regulation 33 and substitutes a new regulation titled “Fees for chargeable services”. The table in the new subregulation 33(1) sets out the fees that a person is liable to pay in respect of a chargeable service. The table in subregulation 33(1) includes fees for:

- in-office and out-of-office services provided during ordinary hours, including: issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training, or other chargeable services in relation to food to which the Act applies
- additional fees, applicable to in-office and out-of-office services, when these are provided outside of ordinary hours
- a chargeable service provided by a person by arrangement with the Commonwealth.

Under subregulation 33(2) an authorised officer must tell the person requesting a service of the different rates that apply if the service is requested to be undertaken outside of ordinary hours of duty.

Fees for services provided outside ordinary hours of duty on weekdays, or provided on a Saturday, Sunday or departmental holiday, attract higher rates than if the services were

provided on a weekday during ordinary hours of duty. This provision provides the assurance to clients that an authorised officer will inform them if the service they have requested will attract the higher rate than the base fee for that service during ordinary hours.

Item 4 omits wording in regulation 34 and substitutes a new timeframe for which fees are due and payable, being 30 days after the day the demand for payment is made. This ensures consistency between the quarantine and imported food charging arrangements.

Item 5 repeals regulation 35 and substitutes it with a new provision titled “Waiver of fees”. The purpose of this amendment is to provide that the Secretary, at his or her own initiative or on written application by a person, may waive fees in circumstances the Secretary considers appropriate. This ensures consistency between the quarantine and imported food charging arrangements.

Item 6 inserts at the end of paragraph 36(c) “including carrying out audits”. The purpose of this amendment is to ensure the Commonwealth can recover for audit services associated with a proposed compliance agreement, which are provided on a fee for service basis.

Item 7 repeals paragraph 36(d) and inserts a new paragraph 36(d) which provides that training is a chargeable service if the training is provided in relation to an imported food compliance agreement or another arrangement a person enters into with the Commonwealth.

Item 8 inserts at the end of paragraph 36(e) “including carrying out audits”. The purpose of this amendment is to ensure the Commonwealth can recover for audit services associated with a compliance agreement, which are provided on a fee for service basis.

Item 9 inserts Part 5 after Part 4, titled “Part 5—Application and transitional provisions”. New regulation 37 provides that the amendments, including new fees, set out in the Regulation apply for chargeable services provided on or after 1 December 2015.

New regulation 37(2) provides that regulation 37 is to be repealed at the start of 1 July 2016, as this transitional provision will no longer be required.

Item 10 repeals the heading “Schedules” before Schedule 1. This is a technical amendment as Schedule 2 is being repealed.

Item 11 repeals Schedule 2. Provisions that remain relevant, or are relevant with amendment, are included elsewhere in this Regulation.

Statement of Compatibility with Human Rights

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

Imported Food Control Amendment (Fees) 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 Control Amendment (Fees) Regulation 2015* (the Amendment Regulation) is to amend the prescribed fees for chargeable services, provide for waivers from these fees and for application and transitional provisions in the *Imported Food Control Regulations 1993*.

The Amendment Regulation gives effect to the new imported food cost recovery fees 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