

EXPLANATORY STATEMENT

Select Legislative Instrument No. 197, 2015

Issued by Authority of the Minister for Agriculture and Water Resources

Export Charges (Collection) Act 2015

Export Charges (Collection) Regulation 2015

Legislative Authority

The *Export Charges (Collection) Act 2015* (the Act) concerns the collection of charges under the *Export Charges (Imposition—General) Act 2015*, the *Export Charges (Imposition—Customs) Act 2015* and the *Export Charges (Imposition—Excise) Act 2015*.

Section 22 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Paragraph 8(a) of the Act provides that a regulation may be made to specify when an export charge is due and payable.

Subparagraphs 8(b)(i) and (ii) of the Act provide that the regulations may prescribe rules relating to the liability of a person's agent to pay an export charge on behalf of a person and the recovery of such charges from the person by the agent.

Subsection 11(1) of the Act provides that a regulation may be made that provides for a late payment fee to be imposed in circumstances where an export charge that is due and payable has not been paid.

Subsection 11(3) of the Act provides that the regulations may prescribe one or more persons who are liable to pay a late payment fee in relation to an export charge that has not been paid.

Purpose

The purpose of the *Export Charges (Collection) Regulation 2015* (the Regulation) is to prescribe details relating to the collection of charges imposed under the related export charging legislation including the time for payment, an agent's liability to pay an export charge and late payment fees.

The Regulation is necessary to implement the new export cost recovery charges developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

Background

The export of certain goods is managed under the *Export Control Act 1982* and the *Australian Meat and Livestock Industry Act 1997* (AMLI Act). These Acts and other related legislation provide the basis for ensuring that exports such as meat, seafood, dairy, plant products, non-prescribed goods and live animals meet the requirements of importing countries.

The department monitors operational policy and manages systems to ensure compliance of exported goods with Australian export controls and importing country requirements. This is achieved by undertaking inspection, audit and certification services. These services 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 of 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 departments 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 activities into the future. The redesign improves the department's cost recovery of export services by:

- ensuring the department is well placed to recover the full costs of export related activities undertaken by the department, as appropriate
- simplifying its existing cost recovery arrangements
- achieving greater equity in client contributions to system costs.

Commencement of the Act and the associated export charges legislation in June 2015 provides the appropriate legal structure for the recovery of costs through the imposition of charges as a cost recovery levy, rather than a fee.

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 *Export Control (Fees) Orders 2001*.

Impact and Effect

This Regulation assists the department to collect charges imposed under both the *Export Charges (Imposition—General) Act 2015* and *Export Charges (Imposition—Customs) Act 2015*.

This Regulation gives effect to this by specifying the manner in which the export charges are to be paid, including the time when a specified export charge is to be paid, the liability of a

person's agent to pay charges on the person's behalf and the establishment of late payment fees where charges are not paid in the time prescribed.

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 an opportunity for stakeholders to provide feedback through a submissions process.

Stakeholder feedback was taken into account and the final CRISs were 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 are 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 biosecurity 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 at Attachment B.

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

Details of the *Export Charges (Collection) Regulation 2015*

Section 1 – Name

This section provides that the name of the Regulation is the *Export Charges (Collection) Regulation 2015*.

Section 2 – Commencement

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

Section 3 – Authority

This section provides for the Regulation to be made under the *Export Charges (Collection) Act 2015*.

Section 4 – Definitions

This section prescribes definitions for terms used in the Regulation.

The term ‘Act’ will be included in this section and is defined to mean the *Export Charges (Collection) Act 2015*.

The term ***export charge (customs)*** means an export charge imposed under sections 7 or 11 of the *Export Charges (Imposition—Customs) Act 2015*.

The term ***export charge (general)*** means an export charge imposed under sections 7 or 11 of the *Export Charges (Imposition—General) Act 2015*.

Section 5 – Time for payment

This section provides that for the purposes of paragraph 8(a) of the Act, an export charge (customs), or an export charge (general), (an export charge) will be due and payable when a demand for payment of the charge is made.

Section 6 – Agent’s liability to pay export charge

This section provides that an agent of a person liable to pay an export charge is jointly and severally liable with that person to pay the charge. This section also provides that, where an agent of a person liable to pay an export charge pays the charge on behalf of that person and at the time when payment is made, the agent has not collected an amount equivalent to the export charge from the person, the agent may recover such an amount from the person as a debt.

By ensuring that an agent of a person is jointly and severally liable to pay an export charge where that person is liable to pay an export charge, the Commonwealth is able to appropriately recover the export charges prescribed under both the *Export Charges (Imposition—General) Act 2015* and the *Export Charges (Imposition—Customs) Act 2015*.

Section 7 – Late payment fee

This section provides that, in circumstances where an export charge is not paid at or before the time the charge is due and payable, a late payment fee will also be due and payable in

additional to the charge. This section also provides that the following formula will be used to calculate the amount of a late payment fee in any particular circumstance:

$$\frac{0.2 \times \text{Relevant charge} \times \text{Days overdue}}{365}$$

Providing for a late payment fee in circumstances where an export charge is due and payable will encourage compliant behaviour in those liable to pay an export charge. It will ensure that they are paid on time and that the Commonwealth recovers its costs.

Section 8 – Person liable to pay late payment fee

This section provides that, if an export charge is due and payable and the person liable to pay the charge, or an agent of that person, has not paid the charge at or before the time the charge is due and payable, the person and the agent are jointly and severally liable to pay the late payment fee.

By providing that an agent of a person is jointly and severally liable with the person to pay a late payment fee, the Commonwealth is able to ensure that the liability to pay a late payment fee will be with the appropriate person or persons.

Statement of Compatibility with Human Rights

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

Export Charges (Collection) 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 *Export Charges (Collection) Regulation 2015* is to prescribe details relating to the collection of charges imposed under the related export imposition legislation including the time for payment, an agent's liability to pay an export charge and late payment fees.

The Regulation is necessary to implement the new export 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**