

## EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

*Export Control Act 1982 and Export Control (Orders) Regulations 1982*

*Export Control (Fees) Order 2015*

### **Legislative Authority**

Section 25 of the *Export Control Act 1982* (the Act) relevantly provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the regulations. Regulation 3 of the *Export Control (Orders) Regulations 1982* provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act.

### **Purpose**

The purpose of the *Export Control (Fees) Order 2015* (the Order) is to prescribe fees, persons liable to pay fees or late fees, the time for payment of fees and exemptions from fees and to provide for related application and transitional provisions.

The Order gives effect to the new export services cost recovery fees developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

### **Background**

The department monitors operational policy and systems to ensure compliance with Australian export controls and any additional 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.

The export of certain goods are managed under the Act and the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act). These Acts and other supporting legislation and delegated legislation provide the basis for ensuring that exports such as meat, seafood, dairy, plants, non-prescribed goods and live animals meet the requirements of 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 services 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 cost recovery of export services by:

- providing for the recovery of charges which are set at amounts that will allow the department to recover its full costs for providing such services
- simplifying the structure of fees and charges
- achieving greater equity in client contributions to system costs.

Until 1 December 2015 and the commencement of this Order, fees in relation to the export services the department provides are prescribed under the *Export Control (Fees) Orders 2001*.

In June 2015, a suite of new charging legislation for which the department is responsible commenced. This includes the *Export Charges (Collection) Act 2015*, *Export Charges (Imposition—Customs) Act 2015*, *Export Charges (Imposition—Excise) Act 2015* and the *Export Charges (Imposition—General) Act 2015*. The 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.

This new legislation overcame the limitation of the existing charging framework *Export Inspection (Service Charge) Act 1985*, *Export Inspection (Quantity Charge) Act 1985*, *Export Inspection (Establishment Registration Charge) Act 1985* and the *Export Inspection and Meat Charges Collection Act 1985* (and their associated regulations) under which charges could only be recovered in relation to prescribed goods within the meaning of the Act. This charging framework did not apply to the AMLI Act.

This Order will operate alongside the legislative framework for cost recovery through the imposition of fees.

## **Impact and Effect**

The Order will assist the department to appropriately recover the costs for export services. The Order will improve and implement part of the department's redesigned cost recovery arrangements for export services, including by:

- establishing fees for audit and inspection services provided across all export-related services

- establishing fees for services provided outside ordinary hours of duty across all export-related services (such as weekends and public holidays)
- establishing fees in relation to the appointment of non-APS employees as authorised officers
- clarifying when payment of fees are due and payable and establishing a late payment fee
- clarifying who is liable to pay fees
- providing for a range of exemptions from fees for services.

## **Consultation**

The department consulted with stakeholders during the development of the redesigned cost recovery fees and levies. 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 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 Order 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 Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Details of the *Export Control (Fees) Order 2015***

### **Part 1—Preliminary**

#### **Section 1—Name**

This section provides that the name of the Order is the *Export Control (Fees) Order 2015*.

#### **Section 2—Commencement**

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

#### **Section 3—Authority**

This section provides for the Order to be made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

#### **Section 4—Schedules**

This section provides for each instrument specified in a schedule to the Order to be amended or repealed as set out in the applicable Schedule.

#### **Section 5—Definitions**

This section provides definitions of terms used in the Order. This ensures the meaning of these terms is clear. Where they exist, the definitions have relied on the definitions within the Act and relevant Export Control Orders to ensure consistency.

Definitions include: *Act, allocated authorised officer, animal reproductive material, area technical manager, audit, basic fee, departmental authorised officer, departmental holiday, disability assistance dog, egg, egg product, Export Control Order, export document, external authorised officer, fish, fish product, government certificate, importing country requirement, inspection, late payment fee, live animal, meat, meat product, milk, milk product, month, occupier, ordinary hours of duty, organic produce, plant products, plants and weekday.*

### **Part 2—Imposition of fees**

#### **Section 6—Imposition of fees for services**

Subsection 6(1) prescribes the goods for which export services may be provided and that a fee may be imposed under Part 2. The goods listed in this subsection are defined in section 5 by reference to the relevant Export Control Order.

This list also includes a reference to sections 8.02 (application for a government certificate) and 8.05 (government certificates for goods other than prescribed goods) of the *Export Control (Prescribed Goods—General) Order 2005*. This provides for fees to be imposed in relation to applications for government certificates.

Subsection 6(2) makes it clear that, unless otherwise specified, that more than one fee may be imposed in connection with an export service.

#### Section 7—Fees in connection with audits

Items 1 to 7 of the table in subsection 7(1) set out the quarter hourly fees a person is liable to pay in respect of the provision of audit services, in relation to the export of goods referred to in those items.

Items 1 and 3 set out different quarter hourly fees depending on who conducts the audit. The higher fee reflects that the authorised officer is required to be a veterinarian under the export control legislation or to meet importing country requirements, to conduct an audit.

Item 8 sets out the quarter hourly fees a person is liable to pay where an application has been made under sections 8.02 or 8.05 of the *Export Control (Prescribed Goods—General) Order 2005*.

Item 9 allows the department to recover the cost of consumable materials used in relation to an audit described in items 1 to 8.

Subsection 7(2) provides that in circumstances where a registered establishment prepares goods described in 2 or more items in the table in subsection 7(1) the highest fee associated with any item in that table will be imposed for the audit of that registered establishment.

The note to this section makes it clear that additional fees, as set out in sections 12, 13 and 14, apply when audits are performed outside of ordinary hours.

#### Section 8—Fees in connection with inspections

Item 1 of the table in subsection 8(1) sets out different quarter hourly fees for veterinarians providing inspection services for live animals and animal reproductive material depending on whether the service could have been provided by an external authorised officer or not. The higher fee is imposed where a service could have been provided by an external authorised officer, but is provided by a departmental authorised officer. Item 1 also specifies the fee for an authorised officer who is not a veterinarian. The qualification of the authorised officer is relevant to the rate of overtime that applies (refer to section 12).

Item 2 sets out that a different fee will apply depending on whether the inspection service (for plants and plant products) could have been provided by an external authorised officer, but is provided by a departmental authorised officer. Section 26 of this Order means that this item will not commence until 1 March 2016. Until this item commences, the only fee applicable to the inspection of plants and plant products is \$36 per quarter hour.

Item 3 sets out two quarter hourly fees that apply to meat and meat product inspection services. The higher fee reflects the circumstance where the authorised officer to conduct

an inspection is required to be a veterinarian, either under the export control legislation or to meet importing country requirements.

Items 4 and 5 sets out the monthly fees that apply to meat and meat product inspection services. Item 4 provides the rate for an authorised officer who is a veterinarian. Item 5 provides for a higher fee to be imposed where an inspection service could have been provided by an external authorised officer, but is provided by a departmental authorised officer.

Items 6 to 9 set out the quarter hourly fees a person is liable to pay in respect of the provision of inspection services in relation to the goods referred to in those items.

Item 10 allows the department to recover the cost of consumable materials used in relation to an inspection described in items 1 to 8.

Note 1 to this section makes it clear that additional fees, as set out in sections 12, 13 and 14 apply when inspections are performed outside of ordinary hours.

#### Section 9—Secretary may enter into an arrangement in relation to performance of inspections in relation to goods for export

This section provides that the Secretary may enter into an agreement with the occupier of a registered establishment to allocate an authorised officer to the establishment to perform inspections of goods for export. The fees that are to be imposed in relation to such an agreement are set out in items 4 and 5 of the table in subsection 8(1).

Subsection 9(4) sets out the requirement for the agreement between the Secretary and the occupier to include a requirement for the occupier to notify the Secretary in writing of their wish to terminate an agreement or request that services not be provided during a specified period (the shutdown period).

Subsection 9(5) provides that where the notification requirements under an agreement have been satisfied in relation to a request to terminate an agreement, the fee for each authorised officer does not apply for any month beginning after the termination date of the agreement.

Subsection 9(6) provides that where the notification requirements under an agreement have been satisfied in relation to a notification of a shutdown period, the monthly fee for each authorised officer will be reduced proportionally for each month during the shutdown.

#### Section 10—Fees in connection with applications for export documents

Section 10 provides for fees in connection with an assessment of an application for an export document. Items 1 to 5 of column 1 specifies the service and goods that the assessment relates to, while column 2 specifies the fee for each export document applied for.

Fees differ, as specified in items 1 to 5, based on the commodity and whether:

- the application for the document was made using the department's electronic export document system or not (except for item 1),
- the document is a replacement document or not.

Item 6 allows the department to recover the cost of consumable materials used in relation to an application for an export document described in items 1 to 5.

The note to this section makes it clear that additional fees, as set out in sections 12, 13 and 14 apply when assessments of applications for export documents are performed outside of ordinary hours.

#### Section 11—Fees in connection with assessment of application for exemption from Export Control Order

This section provides the fees in connection with an assessment of an application under an Export Control Order for an exemption of certain goods from the specified provisions of that order. Column 2 specifies the fee in relation to the goods listed.

The note to this section makes it clear that additional fees, as set out in sections 12, 13 and 14 apply, when these assessments are performed outside of ordinary hours.

#### Section 12—Fees in connection with services performed outside ordinary hours of duty—live animals or animal reproductive material

This section provides the fees for the services of an authorised officer, to be applied in conjunction with the fees referred to in section 7, 8, 10 or 11 in relation to live animals or animal reproductive exports.

Items 1 and 2 of the table in subsection 12(2) apply in relation to services provided by an authorised officer who is not a veterinarian, while items 3 and 4 apply in relation to services provided by an authorised officer who is a veterinarian.

#### Section 13—Fees in connection with services performed outside ordinary hours of duty—meat or meat products

This section provides the fees, to be applied in conjunction with the fees referred to in sections 7, 8, 10 or 11 in relation to meat and meat products. These fees only apply where a service is performed outside of ordinary hours.

Subsection 13(2) applies where the authorised officer providing the service is entitled to be paid a shift loading. Item 1 of the table in section 13(2) provides the rates applicable to an authorised officer who is not a veterinarian, while item 2 is applicable to an authorised officer who is a veterinarian.

Subsection 13(3) applies where the authorised officer providing the service is entitled to be paid overtime. Items 1 and 2 of the table in section 13(3) provide the rates applicable to an

authorised officer who is not a veterinarian, while items 3 and 4 are applicable to an authorised officer who is a veterinarian.

Section 14—Fees in connection with services performed outside ordinary hours of duty—  
other goods

This section provides the fees for the services of an authorised officer, to be applied in conjunction with the fees referred to in sections 7, 8, 10 or 11.

These fees only apply where a service is performed outside of ordinary hours. This section does not apply to services which relate to live animals, animal reproductive material, meat and meat products (which are dealt with in sections 12 and 13).

Section 15—Fees in connection with appointments of non-APS employees as authorised  
officers to perform services in relation to plants or plant products

Section 15 provides for fees in connection with the appointment of non-APS employees as authorised officers to perform services in relation to plants or plant products. These include services for:

- consideration of an application by a person to be appointed as an authorised officer
- training and initial assessment of a person in relation to an application to be appointed as an authorised officer
- additional training and assessment of a person found not to be competent after the initial training
- the making of an instrument to appoint a person as an authorised officer.

Section 16—Exemptions from fees

This section provides for a number of exemptions from the requirement to pay the basic fee in relation to the provision of export services.

These include exemptions for services related to the export of disability assistance dogs, export of goods by an organisation approved by the Secretary that provides aid or assistance in a foreign country, or a registered establishment that is a marine laboratory in certain circumstances.

These exemptions, in conjunction with Part 2 of the *Export Control (Prescribed Goods—General) Order 2005* which prescribes the circumstances in which the Export Control Orders do not apply, aligns the circumstances where a fee will not apply with the exemptions from charges provided for under the *Export Charges (Imposition—Customs) Regulation 2015* and the *Export Charges (Imposition—General) Regulation 2015*.



### **Part 3—Paying Export fees**

#### Section 17—Who is liable to pay a basic fee

Subsection 17(1) specifies that the person liable for a basic fee that is required to be paid is the person to whom the service is, or is to be, provided.

Subsection 17(2) outlines that an agent of a person is also jointly and severally liable with that person to pay the fee. This clarifies that the department can seek to recover fees from exporters and/or their agents when fees are due.

Subsection 17(3) provides that an agent can recover fees owed by a person to whom services are provided, where the agent has paid the fees, as a debt due to the agent. This will serve to clarify the ability for an agent to recover costs owed to them from their clients, for fees paid for under the Order.

#### Section 18—Time for payment of a basic fee

This section provides that a basic fee is due when a demand for payment of the fee is made.

#### Section 19—Late payment fee

This section provides that, in circumstances where a basic fee is not paid at or before the time the fee is due, a late payment fee will also be imposed in addition to the basic fee. The late payment fee is calculated according to the formula in subsection 19(2).

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

#### Section 20—Person liable to pay a late payment fee

This section provides that, if a basic fee is payable and the person liable to pay the fee, or an agent of that person, has not paid the fee at or before the time the fee 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.

#### Section 21—Secretary may decide not to perform services if fees are not paid

Actions taken by the Secretary under this section are intended to encourage compliance with the requirement to pay fees and to ensure that the Commonwealth recovers costs for activities already provided.

This section applies to the person who is liable to pay a basic fee or a late payment fee in connection with a service provided for by this Order.

Subsection 21(2) provides that the Secretary may give a debtor written notice that further export services may not be provided to the debtor unless satisfactory arrangements for the payment of any fees is made within 14 days after the day of the notice.

Under subsection 21(3) the Secretary may decide not to perform further export services unless an agreement, that is satisfactory to the Secretary, has been reached. A decision by the Secretary not to perform export services does not change the debtor's liability to pay the unpaid fees (subsection 21(4)).

Subsection 21(5) clarifies that an export service is a service provided in connection with a fee imposed under this Order.

The note to this section clarifies that Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* provides for the reconsideration and review of decisions made under this section.

#### Section 22—Recovery of basic fees and late payment fees

This section provides the Commonwealth with the ability to recover a basic fee or a late payment fee that is due and payable through action in a relevant court as a debt due to the Commonwealth. This section will ensure the Commonwealth can recover costs for activities already provided.

### **Part 4—Miscellaneous**

#### Section 23— Remitting basic fees and late payment fees

This section provides that the Secretary can remit the whole or part of the basic or late payment fee if the Secretary considers it appropriate to do so. This may be done at the Secretary's initiative or on written application by a person.

Providing the Secretary with the authority to remit charges is necessary to manage the cost recovery arrangements for export services.

### **Part 5—Application and transitional Provisions**

#### Section 24—Definitions

Section 24 provides definitions of the terms *2001 Fees Order* and *commencement time* for the purpose of Part 4. *2001 Fees Orders* means the *Export Control (Fees) Orders 2001* which were in force before the commencement time. The *commencement time* is the time the Order commences, which the note clarifies is 1 December 2015.

#### Section 25—Fees in connection with audits

This section provides that the fees in section 7 of this Order apply in relation to an audit that commences on or after 1 December 2015.

The 2001 Fees Order did not provide for “audit services” as this service was characterised as inspection services or additional inspection services.

Section 26–Fees in connection with inspections (other than inspections performed in accordance with an arrangement)

Subsection 26(1) generally has the effect that fees imposed by this order apply in relation to an inspection by an authorised officer, commencing on or after 1 December 2015, other than where the Secretary has entered into an agreement under section 9 of this Order.

Subsection 26(2) has the effect that the fees imposed by item 2 of the table in section 8 for the inspection of plants and plant products do not apply until 1 March 2016. Until then, a fee of \$36 per quarter hour will apply to all inspections of plants and plant products. This arrangement has been put in place to allow exporters sufficient time to procure the services of an external authorised officer or adjust to the new fee structure.

Subsection 26(3) provides for the effect of the 2001 Fees Orders to continue in relation to an inspection service (except in relation to live animal exports or animal reproductive material) that commenced, but was not completed, before 1 December 2015.

Section 27–Fees in connection with inspections performed in accordance with an arrangement

Subsection 27(1) applies in relation to an arrangement between the Secretary and the occupier of a registered establishment that was in force immediately before 1 December 2015 and, if not for the repeal of the 2001 Fees Order, would have continued for a period.

Subsection 27(2) provides that the agreement described under subsection 29(1) will continue for that period as if that agreement was entered into under section 9 of this Order.

Subsection 27(3) provides that the fee imposed by items 4 and 5 of the table in section 8 of this Order will apply in relation to inspection services performed by the allocated authorised officer after 1 December 2015.

Subsection 27(4) provides that the 2001 Fees Orders will continue in relation to an inspection service performed before 1 December 2015.

Section 28–Fees in connection with applications for export documents

Subsection 28(1) provides that the fees in section 10 of this Order apply in relation to an application for a document made on or after 1 December 2015.

Subsection 28(2) provides for the 2001 Fees Orders to continue in relation to a document issued after 1 December 2015 if the application for the document had been made before 1 December 2015.

### Section 29–Fees in relation to live animals and animal reproductive material

Subsection 29(1) provides for the 2001 Fees Orders to continue in connection with inspection services in relation to live animal exports or animal reproductive material after 1 December 2015 in some circumstances.

These circumstances include where a notice of intention to export live animals or animal reproductive material has been given to the Secretary before 1 December 2015, irrespective of whether the inspection service had commenced but was not completed or had not commenced before 1 December 2015.

Subsection 29(2) continues to apply relevant fees in the 2001 Fees Orders but amends the per head fee prescribed in the 2001 Fees Orders, reducing the fees by the amount of the per head charge prescribed under section 7 of the *Export Charges (Imposition–Customs) Regulation 2015* or the *Export Charges (Imposition–General) Regulation 2015*. The effect of this provision is that for those inspection services described in subsection 29(1) the exporter will not incur a higher cost than if the service was completed prior to 1 December 2015.

Subsection 29(3) provides for the 2001 Fees Orders to continue in connection with application fees, assessment fees and document fees in relation to an approved premises under suborder 23AB(2) or a registered establishment under suborder 23AB(3) if a service had commenced, but not been completed before 1 December 2015.

### Section 30–Fees in connection with assessment of applications for exemption from Export Control Order

This section provides that the fees in section 11 of this Order apply in relation to an assessment of an exemption where the application has been made on or after 1 December 2015.

### Section 31–Fees in connection with appointments of non-APS employees as authorised officers to perform services in relation to plants or plant products

This section provides that the fees in section 15 of this Order apply in relation to the appointment of a non-APS authorised officer to perform services in relation to plants or plant products, where the person applies to be appointed on or after 1 December 2015.

### Section 32–Collection of fees imposed under 2001 Fees Orders

The section provides for orders 45, 47, 48 and 49 of the 2001 Fees Order to continue in relation to fees that were imposed under those Orders prior to 1 December 2015. This means that the department can continue to take action in relation to the non-payment of fees, impose a penalty fee in relation to that non-payment, recover fees and, if required remit fees. This provision is necessary to support the smooth transition from the 2001 Fees Order to this Order.

Section 33–Repeals

Section 33 repeals note 2 to section 8 and Part 4 of the Order, which prescribes application and transitional provisions, in its entirety at the start of 1 December 2016.

**Statement of Compatibility with Human Rights**

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

***Export Charges (Fees) Order 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 Control (Fees) Order 2015* (the Order) is to prescribe fees, persons liable to pay fees or late fees, the payment of fees and exemptions from fees in the Order, and to provide for related application and transitional provisions.

The Order gives effect to the new export services cost recovery fees 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**