EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

*Quarantine Act 1908*

*Quarantine Service Fees Amendment (Cost Recovery) Determination 2015*

**Legislative Authority**

Section 86E of the *Quarantine Act 1908* (the Act) provides that the Minister may make a determination requiring fees of amounts set out in the determination to be paid for or in relation to the doing of anything in connection with various matters specified in this section. This includes specified examinations, services or other quarantine measures carried out or provided under the Act and the giving of permissions and permits under the Act.

The *Quarantine Service Fees Determination 2005* (the Determination) sets out the current fees to be paid for or in relation to the doing of anything in connection with these various matters specified in section 86E of the Act*.*

**Purpose**

The purpose of the *Quarantine Service Fees Amendment (Cost Recovery) Determination 2015* (the Amendment Determination) is to amend the Determination which prescribes fees, persons liable to pay fees or late fees, the payment of fees and exemptions from fees in the Determination, and to provide for related application and transitional provisions.

The Amendment Determination gives effect to the new quarantine cost recovery fees developed as part of the Department of Agriculture and Water Resources’ (the department) redesign of cost recovery arrangements.

**Background**

Shifting global demands, growing passenger and trade volumes, increasing imports from a growing number of countries and population expansion all contribute to the complexity of the modern quarantine environment.

Quarantine services undertaken by the department include assessing and managing the quarantine risks arising from people, goods and vessels (sea and aircraft) entering Australia. These essential services which occur onshore, offshore and at the border are a major part of the department’s day-to-day business.

Monitoring compliance with quarantine legislation 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 Commonwealth recovers the costs of its quarantine services provided to a person (for example, inspection, analysis, treatment and destruction) through fees imposed in the Determination. Cost recovery fees that apply to those services provided directly to an individual or organisation will continue to be imposed under the Determination.

The policy authority for continued cost recovery of quarantine 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 quarantine services into the future. The redesign improves the cost recovery of quarantine 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
* expanding and enhancing services to strengthen the management of quarantine risks.

The *Quarantine Charges (Collection) Act 2014* along with the *Quarantine* *Charges (Imposition—Customs) Act 2014,* the *Quarantine Charges (Imposition—General) Act 2014* andthe *Quarantine Charges (Imposition—Excise) Act 2014*, which commenced on 1 July 2014, provides the appropriate legal framework for the recovery of the Commonwealth’s costs through the imposition and collection of charges (as a cost recovery levy) rather than a fee. The Determination operates alongside this legislative framework.

**Impact and Effect**

The Amendment Determination will allow the department to appropriately recover the costs for and in connection with providing various matters specified in section 86E of the Act. The Amendment Determination will improve and implement part of the department’s redesigned cost recovery arrangement for quarantine services, including by:

* standardising in-office and out-of-office fees for services provided across all quarantine-related services (such as inspections and assessments)
* standardising fees for services provided outside ordinary hours of duty across all quarantine-related services (such as weekends and public holidays)
* simplifying husbandry fees for plants and animals in quarantine stations
* streamlining fees for other services including diagnostic testing
* clarifying when payment of fees are due and payable
* clarifying who is liable to pay fees
* including new exemptions from fees for services provided in Australia’s external territories.

**Consultation**

The department consulted with stakeholders during the development of the redesigned cost recovery fees and charges. This included the department working with all quarantine-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 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 Amendment Determination 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 Determination is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

**Details of the Amendment Determination**

Section 1—Name

This section provides that the name of the Amendment Determination is the *Quarantine Service Fees Amendment (Cost Recovery) Determination 2015*.

Section 2—Commencement

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

Section 3—Authority

This section provides for the Amendment Determination to be made under section 86E of the *Quarantine Act 1908*.

Section 4—Schedules

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

Schedule 1—Amendments

**Item 1** inserts a new heading into the Determination immediately before section 1 which reads ‘Part 1—Preliminary’. The purpose of this amendment is to assist with the division of the Determination into three separate parts.

**Item 2** repeals previous section 3 of the Determination and substitute a new section 3 into the Determination which will make clear that the Determination has been made under section 86E of the Quarantine Act. The Determination has not previously included an express statement as to its authority for having been made.

**Item 3** repeals section 4 of the Determination in its entirety. This section included provisions regarding the application of the Determination when it was originally created, that are no longer applicable.

**Items 4–37** make a number of changes to subsection 5(1) of the Determination for the purpose of removing definitions for redundant terms or terms in respect of which no definition is required as they can reasonably be said to have the meaning in the Act or it is otherwise appropriate for the terms to adopt their ordinary meaning.

This includes repealing, without substituting, the definitions for the following terms: ***application, assessable item, assessment fee, booking fee, Customs, Departmental entry management system, deposit, electronic lodgement, entry, full import declaration, ICS, import declaration, intake period, kitten, lodgement fee, non-standard goods, official quarantine period, pup, quarantine approved premises, self-assessed clearance declaration, standard goods* and *working week.***

The changes to subsection 5(1) of the Determination also extend to inserting new definitions for terms used and in respect of which a specific definition is appropriate. The following definitions have also been inserted or amended: ***basic fee, category 1 permit application, category 2 permit application, category 3 permit application, category 4 permit application, category 5 permit application, consignee, consignment, departmental holiday, disability assistance dog, husbandry services, initial assessment fee, initial assessment period, in-office, late payment fee, out-of-office, payment day, permit, quarantine service, quarantine station, service, training, weekday* and *working day****.*

**Item 38** repeals subsections 5(2)–(5) of the Determination and substitutes new subsections 5(2) and 5(3) into the Determination which will make clear when one or more animals or eggs are a consignment. It will clarify this is the case when one or more animals or eggs are all consigned by the same person to the same consignee and all arrive at a quarantine station for acceptance for quarantine on the same day. This clarification will assist in identifying the fees payable for these consignments.

**Item 39** inserts a new heading immediately above section 6 of the Determination ‘Part 2—Fees’. The purpose of this amendment is to assist with the division of the Determination into three separate parts.

**Item 40** repeals section 6 of the Determination and substitutes a modified section 6 titled 'Fees payable for services’.

New subsection 6(1) sets out the fees a person is liable to pay in respect of the provision of a particular service. The table sets out a range of basic fees for services, outlining the services provided by the department and the respective amount payable.

The table in subsection 6(1) includes fees for:

* in-office and out-of-office services provided during ordinary hours, including: inspection, examination, assessment, analysis, diagnostic services, clearance, treatment, supervision, training and any other service in relation to goods or vessels (except where the service is mentioned in another item), the giving of an approval or entering into a compliance agreement
* additional fees, applicable to in-office and out-of-office services, when these are provided outside of ordinary hours
* the assessment of permit applications, including fees for permits that are not assessed within the expected timeframe and outside of ordinary hours;
* provision of consumable materials in relation to a diagnostic service
* husbandry of various animals and plants
* provision of accommodation for importers of animals in relation to Torrens Island Quarantine Station
* temporary storage of luggage by the Commonwealth where that luggage may pose a high quarantine risk
* services provided to a person on behalf of the Commonwealth.

New subsection 6(2) provides that an 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, and before the relevant service is provided.

Fees for services provided outside ordinary hours of duty on weekdays, or provided on a Saturday, Sunday or Departmental holiday will attract higher rates than if the services are to be provided on a weekday during ordinary hours of duty. This provision will provide the assurance to clients that an 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.

The new subsection 6(3) highlights that unless stated otherwise, each fee that is included in the Determination is a standalone fee and that more than one fee may be payable for, or in relation to, the same service.

**Item 41** repeals sections 6A, 7, 7A, 7B, 7C and 7D of the Determination. These provisions are no longer required.

**Item 42** repeals sections 8 and 8C of the Determination and substitutes a new section 8 and section 8A into the Determination.

Paragraph 8(1)(a) provides that a demand for payment can be made before a service is provided where the relevant fee can be determined. Paragraph 8(1)(b) provides that where a fee cannot be determined prior to the service being provided, payment will be due the last day stated on the invoice. This provision allows the department to manage the collection of payments efficiently in line with its service delivery requirements and systems capabilities.

The new subsection 8(2) provides that where a fee can be determined before a service is provided, an officer must inform the person liable to pay the fee before providing the service. The officer may withhold the service until the fee is paid. This ensures that the department can recover the costs of services provided prior to an officer performing the service. This reduces the financial risk to the department relating to the provision of a service where the cost may not be easily recoverable after the event.

The new subsection 8A(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.

The new subsection 8A(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 importers and/or their agents when fees are due.

The new subsection 8A(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 Determination.

**Item 43** repeals the note under section 9. Relevant terms in the note have been included in the definitions in section 5 of the Determination.

**Item 44** inserts a new section 9A into the Determination. This section provides that the person to whom the service is provided, and their agent (if they have one), are jointly and severally liable to pay a late payment fee if the basic fee has not been paid by the due date.

**Item 45** is a technical amendment to substitute the word ‘provided’ in place of ‘performed, or to applications or entries lodged or assessed’ in subsection 10(1).

**Items 46–48** amend paragraphs 10(1)(e), 10(2)(a) and 10(2)(b) of the Determination to provide for exemptions to extend to Australia’s external territories.

The purpose of the amendments is to exempt certain services undertaken on Christmas Island or Cocos (Keeling) Islands from fees in this Determination, as it is government policy to exempt these external territories from fees and charges for quarantine services. Exemptions relate to fees that would otherwise apply to the importation of disability assistance dogs and imported goods.

**Item 49** repeals subsection 10(3) of the Determination as the term is now defined in the Determination in section 5.

**Item 50** inserts a new part and division into the Determination immediately before Schedule 1 of the Determination. The new Part is titled ‘Part 3—Application and transitional provisions’ and the new division is titled ‘Division 1—Provisions relating to the Amendment Determination. This division provides certainty for clients on the charges that will be imposed on them during the transitional period from 1 December 2015.

The new section 11 provides clarification on the meaning of references used in the new Part 3, Division 1 of the Determination. It describes how items in the Determination that were in force immediately before 1 December 2015 and those in the Determination on or after 1 December 2015 are expressed.

Subsection 12(1) provides that the fee referred to in any of items 1 to 3 or 12 to 15 of the table in subsection 6(1) applies in relation to a service that is provided on or after 1 December 2015. Subsection 12(2) provides that the fees referred to in any of items 4 to 11 of the table in subsection 6(1) applies in relation to a permit application made on or after 1 December 2015.

The new section 13 provides for the application of particular fees in relation to animals and eggs already in a quarantine station before 1 December 2015. This provision is designed to ensure the smooth transition to new fees that will come into force on 1 December 2015, in conjunction with a range of new charges to be imposed under amendments to the *Quarantine Charges (Imposition—Customs) Regulations 2014* or the *Quarantine Charges (Imposition—General) Regulations 2014* that will also come into force on 1 December 2015.

The new subsection 14(1) specifies the Determination as in force on or after 1 December 2015 will apply to animals and eggs (including consignments of both) entering a quarantine station on or after 1 December 2015.

The new subsection 14(2) ensures that any amount paid prior to 1 December 2015 under previous item 36 in relation to ruminants and camelid animals will be taken as a payment in relation to the relevant fee item applicable under this Determination. The amount paid prior to 1 December 2015 is likely to be less than the fee applicable under this Determination. The new note to subsection 14(2) clarifies that if there is a difference between what has been paid and what is payable under the Determination in force on or after 1 December 2015, that amount is payable.

The new subsections 14(3) (in relation to equine animals and other animals weighing more than 25 kilograms), 14(4) (in relation to cats, dogs and other small animals (other than live birds)), and 14(5) (in relation to a consignment of live bees) outline that any amount paid under specified previous items prior to 1 December 2015 will be taken as payment, irrespective of any difference in the amount that would be payable, in relation to a fee item applicable under the Determination in force on or after 1 December 2015.

The new note under subsection 14(4) states that additional fees, in line with the Determination in force on or after 1 December 2015 will be payable where an animal is in quarantine for more days than were originally paid.

The new subsections 14(6) (in relation to a consignment of live birds) and 14(7) (in relation to a consignment of eggs for hatching) state any amount paid under specified previous items prior to 1 December 2015 will be taken as a payment in relation to the relevant fee item applicable under this Determination. It is likely that the fee paid prior to 1 December 2015 will exceed the liability under the Determination in force on 1 December 2015. Where this is the case, any excess amount may be refunded.

The new section 15 will make clear that the fee referred to in new item 13 will apply in relation to a plant, or plants, that are in a quarantine station during a month, or part of a month, beginning on or after 1 December 2015.

The new section 16 makes clear that from 1 December 2015 the fee referred to in new item 15 will apply in relation to a piece of luggage that is stored during a period beginning on or after 1 December 2015.

The new section 17 repeals Part 3 of the Determination in its entirety on 1 July 2016. This Part is intended to be ineffective from this date. From 1 July 2016, all fees will apply as otherwise stated in this Determination.

**Item 51** repeals Schedule 1 of the Determination in its entirety, which is the schedule that prescribes the existing fees.

**ATTACHMENT A**

**Statement of Compatibility with Human Rights**

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

***Quarantine Service Fees Amendment (Cost Recovery) Determination 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 *Quarantine Service Fees Amendment (Cost Recovery) Determination 2015* is to amend the *Quarantine Service Fees Determination 2005* which prescribes fees, persons liable to pay fees or late fees, the payment of fees and exemptions from fees in the Determination, and to provide for related application and transitional provisions.

The Amendment Determination gives effect to the new quarantine 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**