

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

Biosecurity Act 2015

Biosecurity Amendment (Fees) Regulations 2017

Legislative Authority

The *Biosecurity Act 2015* (Biosecurity Act) provides the Commonwealth with powers to, amongst other things, assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment, and the economy.

Section 645 of the Biosecurity Act provides that the Governor-General may make regulations regarding matters required or permitted to be prescribed by the Biosecurity Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Biosecurity Act.

Section 592 of the Biosecurity Act provides that the regulations may prescribe fees that may be charged in relation to activities (fee-bearing activities) carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under the Biosecurity Act.

Purpose

The purpose of the *Biosecurity Amendment (Fees) Regulations 2017* (the Regulations) is to amend the *Biosecurity Regulation 2016* (Biosecurity Regulation) to allow the Commonwealth to charge a person, upon the request of that person, an agreed fee for performing functions and exercising powers in a special processing area relating to international travellers.

Background

The Department of Agriculture and Water Resources and the Department of Immigration and Border Protection proposes to implement 'premium traveller services' at dedicated locations, to be known as 'special processing areas', separate to existing international traveller clearance areas within landing places or ports.

Departmental officers from the Department of Immigration and Border Protection will provide border clearance services to international travellers using premium passenger traveller services at these locations, while departmental officers from the Department of Agriculture and Water Resources will perform functions under the Biosecurity Act.

Travellers will not be exempt from customs, immigration and biosecurity inspections or aviation security screening.

The premium traveller service would be offered by operators of landing places or ports (or other service providers) on a voluntary basis. International travellers who do not wish to use the premium traveller services would still be subject to existing customs, immigration and biosecurity inspections or aviation security screening.

Consultation

The Office of Best Practice Regulation (the OBPR) has been consulted regarding the Regulations. The OBPR consultation reference is 20367. The OBPR advised that although the Regulations would only have a minor regulatory impact on business, a Regulation Impact Statement was required. A short-form Regulation Impact Statement was prepared as set out at [Attachment C](#).

Operators will be under no obligation to request, establish or use the premium traveller services; however, industry participants have advised that the premium traveller service will allow them to offer international travellers an enhanced experience, which will increase Australia's tourism competitiveness.

Consultation was also undertaken with the Department of Immigration and Border Protection (DIBP), who have implemented the customs and immigration related components of the proposal through amendments to the *Migration Regulations 1994* and the *Customs Regulation 2015*.

Impact and Effect

The Regulations will allow the Commonwealth to prescribe fees in relation to the performance of functions and the exercising of powers under the Biosecurity Act at special processing areas. Operators at landing places or ports (or other service providers) will pay the Commonwealth an amount of agreed fee for the Commonwealth to provide personnel to participate in the premium traveller services.

The Commonwealth will enter into contractual arrangements with operators at landing places or ports (or other services providers) for the provision of premium traveller services, which will set out the amount of agreed fee to be paid by the operator (or other service provider).

The use of the premium traveller services by operators will be voluntary.

Details/ Operation

Details of the Regulations are set out in [Attachment A](#).

Other

The Regulations are compatible with the 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 at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after registration.

Matter incorporated by reference

These Regulations do not apply, adopt or incorporate other matter by reference.

Details of the *Biosecurity Amendment (Fees) Regulations 2017*

Section 1 – Name

This section provides that the name of the Regulations is *the Biosecurity Amendment (Fees) Regulations 2017*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the Regulations are registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Biosecurity Act 2015*.

Section 4 – Schedules

This section provides that the instrument specified in the Schedule to these Regulations is amended or repealed as set out in that Schedule, and any other item in a Schedule to these Regulations has effect according to its terms.

Schedule 1 – Amendments

Item 1

Item 1 inserts new definitions of *international traveller* and *special processing area* into section 5 of the *Biosecurity Regulation 2016* (the Biosecurity Regulation) for the purposes of the Regulations.

International traveller

This definition provides that ‘international traveller’ means a person who arrives at a landing place or port aboard an incoming aircraft or vessel.

Special processing area

This definition provides that the ‘special processing area’ of a landing place or port for the carrying out of a fee-bearing activity means:

- (a) if the landing place or port is commonly used by incoming aircraft or vessels—an area of the landing place or port other than an area in which the fee-bearing activity is carried out in relation to a majority of international travellers arriving at the landing place or port; or
- (b) otherwise—an area of the landing place or port in which the fee-bearing activity is, or is to be, carried out in relation to international travellers arriving at the landing place or port.

Special processing area has been defined to specify that the fee-bearing activity is conducted in an area separate from that used for non-fee bearing passenger processing.

Item 2

Item 2 inserts section **106A Fee-bearing activities carried out in special processing areas**, into the Biosecurity Regulations. This section provides for the circumstances under which the Department can charge agreed fees for functions and powers under the Biosecurity Act performed in special processing areas and in relation to one or more international travellers.

This section enables the Director of Biosecurity to, at the request of a person, arrange for a fee-bearing activity to be carried out in performing functions and exercising powers under the Biosecurity Act in relation to international travellers arriving at the landing place or port and their baggage at a special processing area of the landing place or port.

The person may be charged an agreed fee in respect of the provision of the fee-bearing activity and any other fee-bearing activity in relation to the international travellers and their baggage. The amount of agreed fee must be worked out in accordance with subsection 106A(3).

The section would set out the methodology for determining the amount of agreed fee,, including how the fee is calculated and the upper limit of the fee. The fee is calculated based on the costs of providing the services, with a multiplier of the base cost rate added to arrive at the agreed fee to have dedicated officers made available at the nominated special processing areas. The maximum per hour fee is specified as being twice the base cost rate.

The note to subsection 106A(2) clarifies that an agreed fee in respect of the carrying out of fee-bearing activity and other fee-bearing activities may be paid in anticipation of the carrying out of the activity.

Subsection 106A(4) provides that a fee charged under subsection (2) in relation to a fee-bearing activity is in addition to any other fee that may be charged under this instrument in relation to the activity. For example, if a person was charged a fee in relation to a fee-bearing activity under subsection 106A(2), and that same activity gives rise to the person being charged a fee for a fee-bearing activity listed in the table in subsection 106(1) of the Biosecurity Regulation, then both fees will be charged.

Item 3

Item 3 repeals the heading of section 107 and substitutes a new heading which outlines when sections 106 and 106A do not apply. Section 107 currently sets out the circumstances in which section 106 does not apply. The effect of the amendment is to explain when sections 106 and 106A do not apply.

Item 4

Item 4 repeals the heading of section 112 and substitutes a new heading to make it clear that section 112 sets out the agents' liability to pay certain cost-recovery charges. The heading currently provides that section 112 sets out agents' liability to pay cost-recovery charges. The purpose of the amendment is to make it clear that fees charged under subsection 106A(2) are to be excluded from the operation of section 112.

Item 5

Item 5 amends section 112 by inserting, after "cost-recovery charge" (wherever occurring), "(other than a fee charged under subsection 106A(2))" The purpose of the amendment is to

make it clear that fees charged under subsection 106A(2) are to be excluded from the operation of section 112.

Statement of Compatibility with Human Rights

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

Biosecurity Amendment (Fees) Regulations 2017

The *Biosecurity Amendment (Fees) Regulations 2017* (the Regulations) are 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 Regulations amend the *Biosecurity Regulation 2016* (the Biosecurity Regulation) to give the Department of Agriculture and Water Resources (the Department) the power to charge agreed fees for carrying out statutory functions relating to international travellers in a special processing area, at the request of a person or persons. These functions will be open to all international travellers upon request.

Travellers using these services will be assessed and processed by the Department and the Department of Immigration and Border Protection (DIBP) in accordance with established traveller clearance procedures. Travellers will not be exempt from existing customs, immigration and biosecurity inspections or aviation security screening.

The Department charging fees associated with providing these fee-bearing activities will assist the Department to recover the costs of arranging and paying dedicated teams of officers to deliver these services without adversely impacting the existing assessments and management of biosecurity risk by the Department.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights.

The Hon. Barnaby Joyce MP

Deputy Prime Minister and Minister for Agriculture and Water Resources

Regulation Impact Statement

Name of department/agency: Department of Immigration and Border Protection,
Department of Agriculture and Water Resources

OBPR Reference number: 20367

Name of proposal: Premium Traveller Facilitation Services

Summary of the proposed policy and any options considered:

The Department of Immigration and Border Protection (DIBP) and the Department of Agriculture and Water Resources (DAWR) propose to undertake international traveller border clearance activities at dedicated locations, separate to existing international traveller clearance areas. These services, referred to as Premium Traveller Facilitation services, would be provided on a user-pays basis, rather than directly funded by Government. Industry would enter into this arrangement, and associated regulatory costs, on a voluntary basis.

Option 1 – offer a premium traveller facilitation service with an agreed level of service to airport operators and other service providers on a commercial charging basis (recommended option)

The Office of Best Practice Regulation assessed this option as having a minor regulatory burden on industry. Under this proposal, the government would enter into contractual arrangements to provide an agreed level of service to clients. Fixed term contracts ensure that the Government can recover the cost of services it provides and that airport operators can reliably offer premium services to international travellers without impacting on existing traveller facilitation rates. This will allow airport operators to develop products which could be marketed to airlines to streamline and enhance their traveller experience during arrival in and departure from Australia.

Option 2 – offer a premium traveller facilitation service with regulatory burden carried by border agencies

This option has a lower regulatory burden on industry, however there will be a high administrative burden on border agencies that would need to be absorbed. Funding the costs of providing premium traveller clearance services through appropriation would reduce the regulatory impost on airline operators and other service providers seeking to offer premium services, however this is not a viable option as funding biosecurity and border protection services directly through taxation for the benefit of a commercial entity is inconsistent with government policy.

Option 3 – Status quo

Under this option, DIBP and DAWR would continue to assess applications from airport operators and airlines for dedicated traveller facilitation services on a case by case basis. Where there is agreement to provide these services, border agencies will continue to draw resources from other border clearance activities. This is not a recommended option as ‘black-out’ periods (periods where no border clearance services are available) will continue to apply. Such ad-hoc arrangements would make it difficult for airline operators and other service providers to meet their objectives to provide certainty of services to their clients.

What are the regulatory impacts associated with this proposal? Explain.

Airport operators and businesses offering off-terminal clearances will experience a minimal regulatory impact. Businesses that implement the premium facilitation service offered by border agencies will enter into a contract with government and will be invoiced accordingly. Contracts and invoicing are not required for provision of the current border agency traveller clearance processes. It is expected that the regulatory impact and cost of these additional requirements will be minor in nature as businesses have existing invoice and payment systems for the remittance of other border fees and charges.

What are the regulatory costs/savings associated with this proposal? Explain and quantify.

There will be a small increase in administrative costs for participating businesses. It is assumed that for the initial six months it will take a business approximately 8 hours per month to initiate and maintain the contract, and process, reconcile and finalise the invoice. Once the processes are imbedded in business-as-usual activities, it will take business 4 hours per month to undertake these activities. As such it is estimated that the additional time spent on contract establishment, management and invoice processing will be 72 hours per year per business in the first year and 48 hours per business in every year after that.

The Premium Traveller Facilitation Services NPP proposes an initial roll-out of this service to three major airports (Melbourne, Sydney and Perth) with the view to implementation at other major international airports and for off-terminal clearances following successful uptake at these airports. Therefore, initially only three businesses will initially be affected by the small increase in administrative costs with a gradual increase in the number of businesses participating in the scheme to 35 businesses by the end of 10 years. The cost to business is \$65.45 per hour (from the Regulatory Burden Measurement framework February 2016 Appendix 2), resulting in a total average increase in regulatory cost to business over a ten year period of \$64 245.72 per year.

Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total, by sector	\$0.064	\$0	\$0	\$0.064
Cost offset (\$ million)	Business	Community organisations	Individuals	Total change in cost
Agency	(\$42.2)	\$0	\$0	(\$42.2)
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (\$0.064- \$42.2) (\$ million) = (\$42.136)				

What are the offsets for the regulatory costs associated with this proposal?

The Department of Immigration and Border Protection proposes to fully offset the regulatory cost of \$0.064 million per annum from the Trusted Trader Programme (OBPR ID 17409).