

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

PGPA Act Determination (Biosecurity, Imported Food and Export Certification Special Account 2020)

Purpose of this determination

This determination is made under subsections 78(1) and 78(3) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to establish the *Biosecurity, Imported Food and Export Certification Special Account 2020* (the special account).

The purpose of this special account is to manage cost-recovered fees, levies and charges associated with biosecurity, import and export inspection and certification services provided by the Department of Agriculture, Water and the Environment (the Department) under legislative framework which includes the *Imported Food Control Act 1992*, *Export Control Act 1982* and the *Biosecurity Act 2015*.

The *Biosecurity Regulations 2016* provide fees for different biosecurity activities. Similarly, the *Imported Food Control Regulations 2019* provide the basis for fees that are imposed for imported food control activities.

Biosecurity and imported food cost recovery charges are implemented through the biosecurity and imported food charging Acts and associated delegated legislation, which provide powers to impose and collect charges for biosecurity and imported food compliance-related activities. These include the:

- *Biosecurity Charges Imposition (Customs) Act 2015*
- *Biosecurity Charges Imposition (Excise) Act 2015*
- *Biosecurity Charges Imposition (General) Act 2015*
- *Imported Food Charges (Imposition—Customs) Act 2015*
- *Imported Food Charges (Imposition—Excise) Act 2015*
- *Imported Food Charges (Imposition—General) Act 2015*
- *Imported Food Charges (Collection) Act 2015*
- *Biosecurity Charges Imposition (Customs) Regulation 2016*
- *Biosecurity Charges Imposition (General) Regulation 2016*

Section 25 of the *Export Control Act 1982* provides the power to impose fees in relation to a range of export certification activities. The specific amounts are set out in the *Export Control (Fees) Orders 2015*.

Export cost recovery charges are implemented through the export charging Acts and associated delegated legislation, which provide powers to impose and collect charges for export related functions. These include the:

- *Export Charges (Collection) Act 2015*
- *Export Charges (Imposition—Customs) Act 2015*
- *Export Charges (Imposition—Excise) Act 2015*
- *Export Charges (Imposition—General) Act 2015*

- *Export Charges (Imposition—Customs) Regulation 2015*
- *Export Charges (Imposition—General) Regulation 2015*

For the avoidance of any doubt as to the technical classification of the charge in the customs and taxation context, all charges appear in identical form in regulations made under each of the Acts.

These activities safeguard Australia's animal and plant health status to maintain overseas markets and protect the economy and environment from the impact of exotic pests and diseases.

There is currently an *Australian Quarantine and Inspection Service Special Account* (AQIS special account), established by the *Financial Management and Accountability Determination 2010/11 – Australian Quarantine and Inspection Service Special Account Establishment 2010*, which is due to sunset on 1 October 2020 under section 50 of the *Legislation Act 2003*. The special account will replace the AQIS special account, and allow the Department to continue to administer biosecurity, import and export inspection and certification services.

Once the special account is established, the determination that established the AQIS special account will be revoked and an amount equivalent to the amount standing to the credit of the AQIS special account immediately before its repeal will be credited to the special account as its opening balance.

The operating context of special accounts

A special account may be established by a determination made by the Minister for Finance (under section 78 of the PGPA Act) or by an Act (see section 80 of the PGPA Act).

A special account is an appropriation mechanism that sets aside amounts within the Consolidated Revenue Fund (CRF) for spending on specified purposes. The purposes of a special account are set out in the establishing determination or Act.

In accordance with section 81 of the Constitution, all revenues or moneys raised or received by the Commonwealth Executive Government form one CRF. Section 83 of the Constitution provides that such money may not be drawn from the Treasury except under an appropriation made by law.

- A special account enables revenues or moneys raised or received to be set aside for the purposes of that special account.
- Expenditure for the purposes of a special account is supported by an appropriation in the PGPA Act: subsection 78(4) for a special account established by a determination or subsection 80(1) for a special account established by an Act.

Special account determinations

Special account determinations are legislative instruments for the purposes of the *Legislation Act 2003*. Special account determinations may be varied or revoked by a subsequent determination made under subsection 78(3) of the PGPA Act.

In accordance with subsection 79(3) of the PGPA Act, the Finance Minister must table a copy of such determinations in each House of the Parliament. Subsection 79(4) of the PGPA Act provides that special account determinations are subject to disallowance by either House of the Parliament.

The disallowance period starts on the day a special account determination is tabled in the House and ends on the fifth sitting day of the House after the determination was tabled in that House.

If neither House passes a resolution to disallow a special account determination, under subsection 79(5) it commences on the day immediately after the last day on which it could have been disallowed, or on a later day if specified in the determination. This determination will commence on the day immediately after the last day on which it could have been disallowed. The Secretary of the Department of Agriculture, Water and the Environment will be the accountable authority responsible for the special account on commencement of this determination.

Human Rights

A Statement of Compatibility with Human Rights is not required for this determination. Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility with Human Rights for all legislative instruments subject to disallowance under section 42 of the *Legislation Act 2003*. While determinations made or varied under subsections 78(1) or 78(3) of the PGPA Act are subject to disallowance under section 79 of the PGPA Act, subsection 79(2) provides that they are not subject to disallowance under section 42 of the *Legislation Act 2003*. As such, a Statement of Compatibility with Human Rights is not required.

Consultation

The Department of Agriculture, Water and the Environment was consulted in the preparation of this determination.