

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

Export Charges (Imposition–Customs) Act 2015

Export Charges (Imposition–Customs) Regulations 2021

Legislative Authority

The *Export Charges (Imposition—Customs) Act 2015* (the Act) is an Act to impose, as taxes, charges relating to the export of goods, so far as those charges are neither duties of customs nor duties of excise. Section 15 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Subsections 7(1) and 7(4) of the Act provide that a regulation may prescribe a charge in relation to the export of regulated goods, but only so far as that charge is considered a duty of customs within the meaning of section 55 of the Constitution. Subsection 7(3) of the Act provides that multiple charges under subsection 7(1) may be prescribed in relation to the same regulated goods, and a single charge under subsection 7(1) may be prescribed in relation to multiple kinds of goods.

Subsection 8(1) of the Act provides that a regulation may prescribe a charge under subsection 7(1) by specifying an amount as the charge or the method for calculating the amount of a charge. Subsection 8(2) provides that, before the Governor-General may make regulations under subsection 7(1), the Minister must be satisfied that the amount of the charge is set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the export of the regulated goods.

Section 10 of the Act provides that a regulation may be made to provide exemptions from a charge prescribed under subsection 7(1). Sections 11, 12 and 14 are equivalent to sections 7, 8 and 10 respectively, but are applicable to the imposition of charges in relation to *matters relating* to the export of regulated goods, rather than charges in relation to the export of the goods.

For the purposes of subsections 8(2) and 12(2), the Minister has certified that he is satisfied that the amounts of the charges in the *Export Charges (Imposition – Customs) Regulations 2021* (the Regulations) are set at levels designed to recover no more than the Commonwealth's likely costs in connection with the prescribed matters to which they relate. The department's financial modelling has confirmed that the prices of the charges in the Regulations are designed to recover no more than the Commonwealth's likely costs in connection with the items to which the charges relate.

Purpose

The purpose of the Regulations is to prescribe charges in relation to the export of regulated goods and matters relating to the export of regulated goods which are considered duties of customs within the meaning of section 55 of the Constitution. The Regulations are made under the Act.

The Regulations also repeal the *Export Charges (Imposition—Customs) Regulation 2015* which previously fulfilled this purpose.

The Regulations prescribe the same amount for the charges as in the *Export Charges (Imposition—Customs) Regulation 2015*. However, the Regulations specify these charges on the basis of goods and matters in the *Export Control Act 2020* (the Export Control Act), including rules made for the purposes of the Export Control Act (Export Control Rules).

Background

On 6 March 2020 the Export Control Act received the Royal Assent. The export of certain goods is managed under the Export Control Act. The Export Control Act and other supporting legislation provide the basis for ensuring exports of meat, seafood, dairy, plants, live animals and other kinds of goods meet the requirements of importing countries.

To support the enactment of the Export Control Act, the Act, the *Export Charges (Imposition—General) Act 2015* and the *Export Charges (Imposition—Excise) Act 2015* were amended. These Acts do not set the amounts of the charges and only authorise the imposition of charges prescribed in regulations.

Given the broad nature of the amendments, a remade regulation in the form of the Regulations was considered more appropriate than amending the *Export Charges (Imposition—Customs) Regulation 2015*. The Regulations commenced at the same time as the Export Control (Fees and Payments) Rule 2021, which prescribes fees where a service is provided directly to an individual or business or organisation.

Impact and Effect

The Regulations do not increase any charges in relation to the export of goods but ensure these charges are prescribed on the basis of recently enacted legislation.

Consultation

The Department of Agriculture, Water and the Environment (the department) consulted publicly on the Regulations during December 2020 and January 2021.

The Regulations do not change the existing charges which the department consulted on during the development of the *Export Charges (Imposition—Customs) Regulation 2015* (which the Regulations replace). At that time the department also 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 then Secretary of the department and endorsed by the then 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 Office of Best Practice Regulation (OBPR) has advised that these Regulations are machinery in nature and that a Regulation Impact Statement (RIS) is not required (OBPR reference 43672).

Details and Operation

Details of the Regulations are set out in Attachment A.

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

The Regulations commence at the same time as section 3 of the Export Control Act. Section 3 of the Export Control Act commences at 3am (by legal time in the Australian Capital Territory) on 28 March 2021 (or at an earlier time if by Proclamation).

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 in Attachment B.

Details of the Export Charges (Imposition–Customs) Regulations 2021**Section 1 – Name**

This section provides that the name of the Regulations is the *Export Charges (Imposition—Customs) Regulations 2021*.

Section 2 – Commencement

This section provides that the Regulations commence at the same time as section 3 of the Export Control Act. Commencement of section 3 of the Export Control Act is provided for in section 2 of the Export Control Act, as at 3am (by legal time in the Australian Capital Territory) on 28 March 2021 (or at an earlier time if by Proclamation).

There is a note below the table that provides the table relates only to the Regulations as originally made. It will not be amended to deal with later amendments of the Regulations. The purpose of this note is to clarify that the commencement of any subsequent amendments would not be reflected in this table.

Section 3 – Authority

This section provides that the Regulations are made under the *Export Charges (Imposition—Customs) Act 2015* (the Act). A note below the table provides that the Regulations extend to Norfolk Island and the Territory of Heard Island and McDonald Islands. The note also refers readers to section 4 of the Act, the *Export Control (Plants and Plant Products) Rules 2021* and the *Export Control (Fish and Fish Products) Rules 2021*.

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Regulations. This enables the repeal of the *Export Charges (Imposition—General) Regulation 2015* (see Schedule 1 below).

Section 5 – Simplified outline of this instrument

This section provides a simplified outline of the Regulations stating the Regulations prescribe:

- Charges in relation to the export of certain goods covered by the Export Control Act
- Charges in relation to matters relating to the export of certain goods covered by the Export Control Act and
- Exemptions from these charges.

The section also notes the charges prescribed in the Regulations are imposed under the Act as taxes.

Section 55 of the Constitution requires that laws imposing duties of customs deal with duties of customs only, and laws imposing duties of excise deal with duties of excise only. Section 55 has the effect that laws imposing ‘general’ taxation (that is, taxes that are neither customs nor excise duties) may not impose duties of customs or excise. The Regulations impose only duties of customs.

This section also notes that charges that are neither duties of customs nor duties of excise are prescribed by the *Export Charges (Imposition—General) Regulations 2021*. The charges listed in the Regulation are also listed in the *Export Charges (Imposition—General) Regulations 2021*, which are made under the *Export Charges (Imposition—General) Act 2015*. This ensures that a charge is validly imposed under the relevant Act even where it is unclear whether it is a duty of customs or a ‘general’ tax.

The section notes the *Export Control (Fees and Payments) Rules 2021* prescribe other matters relating to the charges prescribed in the Regulations. These include who is liable to pay the charges, when the charges are due and payable, and matters relating to unpaid charges.

Lastly, the section also notes the regulations extend to Norfolk Island and the Territory of Heard Island and McDonald Islands and certain areas adjacent to those Territories.

Section 6 – Definitions

This section provides definitions of terms used throughout the Regulations.

Many of these terms also have the same meaning in the Regulations as they have in the Export Control Act, Export Control Rules, or other Acts or legislative instruments.

Part 2—Charges in relation to export of certain goods

Section 7 – Charges—export of livestock

This section provides the charges payable in relation to the export of prescribed livestock. Prescribed livestock is defined in section 6 of the Regulations as having the meaning given by the *Export Control (Animals) Rules 2021* (Animals Rules).

The charges are listed in a table in section 7, where column 1 of the table describes different kinds of livestock and column 2 describes the corresponding charges that apply for animals exported. Item 1 of the table provides the charge for cattle, deer, buffalo or camelids (including the young of those animals) as \$1.21 for each animal exported. Item 2 of the table provides the charge for sheep and goats (including the young of those animals) as \$0.31 for each animal exported.

These charges are set out for the purposes of subsection 7(1) of the Act. In accordance with subsection 8(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the export of livestock. The department’s financial

modelling has confirmed that the price of the charges in the Regulations is designed to recover no more than the Commonwealth's likely costs in connection with the items to which the charge relates.

Section 8 – Charges—plants and plant products

This section provides the charges payable in relation to the export of plants and plant products. Horticultural products, phytosanitary certificate, plants and plant products are defined in section 6 as having the meaning given by the *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules).

Subsection 8(1) sets out the charges, which differ depending on the goods exported and the market exported to – specifically, whether subsections 8(2) and 8(3) apply.

Subsection 8(2) applies where a market requires a phytosanitary certificate for, and imposes significant other conditions on the importation of, the relevant horticultural product imported from Australian territory.

Subsection 8(3) applies where a market does not impose significant conditions on the importation of the relevant horticultural product imported from Australian territory.

Subsection 8(4) clarifies that a requirement for a phytosanitary certificate is not a significant condition for the purposes of subsection 8(3). Accordingly, subsection 8(2) or 8(3) could apply to a market that requires a phytosanitary certificate for the relevant horticultural product imported from Australian territory, although subsection 8(3) would apply even where a phytosanitary certificate is not required. Whether subsection 8(2) or 8(3) applies will depend on whether or not a significant condition is imposed.

The charges for exporting plant or plant products are set out in a table at subsection 8(1). Column 1 of the table describes the types of plants and plant products and column 2 describes the corresponding charges that apply for consignments exported. Item 1 provides the charge for horticultural products exported to a market to which subsection 8(2) applies as \$1.30 per tonne or part tonne for each consignment exported in a financial year.

Item 2 provides the charge for horticultural products exported to a market to which subsection 8(3) applies, as \$0.65 per tonne or part tonne for each consignment exported in a financial year.

Item 3 provides the charge for plants or plant products not covered by Item 1 or 2 as \$0.11 per tonne or part tonne for each consignment exported in a financial year.

These charges are set out for the purposes of subsection 7(1) of the Act. The charges are higher where the market exported to places stricter conditions on the goods exported. In accordance with subsection 8(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the export of plants and plant products.

Part 3—Charges in relation to certain matters relating to export of certain goods

Section 9 – Charges—registered establishments

This section provides the charges payable in relation to registered establishments. The charges differ depending on the type of registered establishment, the goods exported, and the market exported to, including whether subsections 9(2) and 9(3) apply.

Subsection 9(2) applies where a market requires a phytosanitary certificate for, and imposes significant other conditions on the importation of, the relevant horticultural product imported from Australian territory.

Subsection 9(3) applies where a market does not impose significant conditions on the importation of the relevant horticultural product imported from Australian territory.

Subsection 9(4) clarifies for the purpose of subsection 9(3), a requirement for a phytosanitary certificate for a horticultural product is not a significant condition.

The charges are set out in a table in subsection 9(1) and subject to subsection 9(5). Column 1 of the table describes the types of registered establishment and column 2 describes the corresponding charges that apply.

Some charges are charged per year or part of a year, some per financial year or part of a financial year, and some per calendar month or part of a calendar month. The timeframes for each charge reflect existing arrangements in place with each export function. The period of the charge varies for different commodities and categories of registration to reflect the different activity pattern in each export industry.

Item 1 provides the charge for a registered establishment holding and assembling live-stock for export.

The charge is \$5,000 for each year, or part of a year during which the registration is in force.

Item 2 provides the charge for a registered establishment (other than an establishment covered by Item 4) for:

- Operations associated with the preparation of horticultural products for export to a market to which subsection 11(2) applies or
- Operations to load unpacked quantities of grain into a bulk vessel for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$6,000 or
- If the establishment is first registered after 1 January in the financial year—\$3,000.

Item 3 provides the charge for a registered establishment (other than an establishment covered by item 4) for export operations associated with the preparation of:

- Horticultural products for export to a market to which subsection (3) applies or
- Any other prescribed plants or prescribed plant products for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$3,000 or
- If the establishment is first registered after 1 January in the financial year—\$1,500.

Item 4 provides the charge for a registered establishment that is a small horticultural products registered establishment for a financial year. A small horticultural products registered establishment has the meaning provided by the Plants Rules.

The charge for the financial year, or part of the financial year, during which the registration is in force is \$600.

Item 5 provides the charge for a registered establishment for any of the following operations:

- Slaughter or dressing of an animal (other than poultry) for export
- Production, preparation, storage or handling of casings for export
- Storage, handling or transportation of prescribed meat or prescribed meat products for export.

The charge for each calendar month, or part of a calendar month, during which the registration is in force is \$840.

Item 6 provides the charge for a registered establishment for any of the following operations to prepare prescribed meat or prescribed meat products for export:

- Slaughter or dressing of poultry
- Further processing
- Boning.

The charge for each calendar month, or part of a calendar month, during which the registration is in force is \$1,250.

Item 7 provides the charge for a registered establishment for export operations carried out in relation to prescribed meat or prescribed meat products (within the meaning of the *Export Control (Meat and Meat Product) Rules 2021*) or prescribed wild game meat or prescribed wild game meat products (within the meaning of the *Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021*) under a State or Territory inspection and audit arrangement.

The charge for each calendar month, or part of a calendar month, during which the registration is in force is \$840.

Item 8 provides the charge for a registered establishment for storage of prescribed milk or prescribed milk products for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$1,820 or
- If the establishment is first registered after 1 January in the financial year—\$910.

Item 9 provides the charge for a registered establishment (other than an establishment covered by item 8) for operations to process or pack prescribed milk or prescribed milk products for export, and that:

- Exported less than 2,000 tonnes of prescribed milk or prescribed milk products in the financial year ending immediately before the financial year to which the charge relates and
- Are either owned by a corporation or owned by, or part of, a co-operative.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$4,275 or
- If the establishment is first registered after 1 January in the financial year—\$2,137.50.

Item 10 provides the charge for a registered establishment (other than an establishment covered by Item 8) for operations to process or pack prescribed milk or prescribed milk products for export and that:

- Exported 2,000 tonnes or more of prescribed milk or prescribed milk products in the financial year ending immediately before the financial year to which the charge relates and
- Are either owned by a corporation or owned by, or part of, a co-operative.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$7,729 or
- If the establishment is first registered after 1 January in the financial year—\$3,864.50.

Item 11 provides the charge for a registered establishment that is:

- A vessel that is registered to prepare to prescribed fish or prescribed fish products for processing at another establishment before export or
- A land-based establishment that is registered solely for the preparation of live prescribed fish for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$1,223 or
- If the establishment is first registered after 1 January in the financial year—\$611.50.

Item 12 provides the charge for a registered establishment that is:

- A vessel (other than a vessel covered by Item 11) that is registered for export operations in relation to prescribed fish or prescribed fish products or
- A land-based establishment (other than an establishment covered by Item 11 or 13) that is registered to prepare prescribed fish or prescribed fish products for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$2,446 or
- If the establishment is first registered after 1 January in the financial year—\$1,223.

Item 13 provides the charge for a registered establishment that is registered for the storage of prescribed fish or prescribed fish products for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$1,835 or
- If the establishment is first registered after 1 January in the financial year—\$917.50.

Item 14 provides the charge for export operations associated with the preparation of prescribed eggs or prescribed egg products for export.

The charge for each financial year, or part of a financial year, during which the registration is in force is:

- If the registration was in force on or before 1 January in the financial year—\$1,835 or
- If the establishment is first registered after 1 January in the financial year—\$917.50.

Subsection 9(5) provides that if a charge would be payable in relation to a registered establishment under items 2 or 3 of the table in subsection 9(1), or two or more of items 5, 6 and 7 in that table, or two or more of items 8, 9 and 10 in that table, then whichever charge in relation to the registered establishment is the higher or highest of the amounts for those items, is payable.

The purpose of subsection 9(5) is to prevent establishments that fall in multiple related categories from having to pay multiple charges for registration. This reflects the intention that the charges are cost recovery and thus should not exceed what is required for the recuperation of costs incurred by the department.

These charges are set out for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the administration of registered establishments.

Section 10 – Charges—slaughtering or dressing certain animals

This section provides the charges payable in relation to the slaughtering or dressing of certain animals.

Subsection 10(1) sets out the charges in a table, which differ depending on the type of animal and are calculated by calendar month. Column 1 of the table describes the types of animal slaughtered or dressed at the establishment in a calendar month and column 2 describes the corresponding charges that apply, in terms of a rate per animal slaughtered or dressed at the establishment in the previous calendar month.

Item 1 provides the charge for slaughtering or dressing calves at a registered establishment in a calendar month is \$0.07 for each calf slaughtered or dressed at the establishment in the previous calendar month.

Item 2 provides the charge for slaughtering or dressing deer (including wild game deer) at a registered establishment in a calendar month is \$0.14 for each deer slaughtered or dressed at the establishment in the previous calendar month.

Item 3 provides the charge for slaughtering or dressing emus or ostriches at a registered establishment in a calendar month is \$0.10 for each emu or ostrich slaughtered or dressed at the establishment in the previous calendar month.

Item 4 provides the charge for slaughtering or dressing kangaroos or wild boars at a registered establishment in a calendar month is \$0.05 for each kangaroo or wild boar slaughtered or dressed at the establishment in the previous calendar month.

Item 5 provides the charge for slaughtering or dressing pigs at a registered establishment in a calendar month is \$0.24 for each pig slaughtered or dressed at the establishment in the previous calendar month.

Item 6 provides the charge for slaughtering or dressing rabbits, possums or hares at a registered establishment in a calendar month is \$0.02 for each rabbit, possum or hare slaughtered or dressed at the establishment in the previous calendar month.

Item 7 provides the charge for slaughtering or dressing sheep, goats or lambs at a registered establishment in a calendar month is \$0.18 for each sheep, goat or lamb slaughtered or dressed at the establishment in the previous calendar month.

Item 8 provides the charge for slaughtering or dressing bulls, cows, steers, heifers, buffalos, camels, donkeys, horses or any other animals not covered by another item in this table (but

not poultry or a calf of any animal) at a registered establishment in a calendar month is \$0.70 for each of those animals slaughtered or dressed at the establishment in the previous calendar month.

Subsection 10(2) provides that each animal that is both slaughtered and dressed at the same registered establishment is only counted once for the purposes of calculating the charge, even if the slaughter and dressing occurs over more than one calendar month. Subsection 10(3) provides that the charge would not apply to the registered establishment for a calendar month if the establishment was not registered in the previous month. This reflects the intention that the charges are for cost recovery and thus should not exceed what is required for the recuperation of costs incurred by the department.

Subsection 10(4) clarifies that a reference to an animal (other than deer, sheep, bulls, cows, steers, heifers, buffalos or camels) in the table in subsection 10(1) includes the young of that animal. The note after subsection 10(4) refers the reader to Item 1 of the table under subsection 10(1) which refers to calves and clarifies that this covers the young of deer, sheep, bulls, cows, steers, heifers, buffalos, camels and calves of other animals.

These charges are set out for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the charges for slaughtering or dressing certain animals.

Section 11 – Charges—applications

This section provides the charges payable in relation to various applications made under the Export Control Act or Export Control Rules.

The charges differ depending on the type of application. The charges are set out in a table in section 11. Column 1 of the table describes the types of applications and column 2 describes the corresponding charges that apply.

Item 1 provides the charge for an application under section 111 of the Export Control Act to register an establishment for holding and assembling prescribed livestock for export is \$600.

Item 2 provides the charge for an application under section 116 of the Export Control Act to renew the registration of a registered establishment for holding and assembling prescribed livestock for export is \$600.

Item 3 provides the charge for an application under subsection 120(1) of the Export Control Act to vary the registration of a registered establishment for holding and assembling prescribed livestock for export is \$300.

Item 4 provides the charge for an application under section 150 of the Export Control Act to approve a proposed arrangement in relation to prescribed livestock is \$600.

Item 5 provides the charge for an application under subsection 161(1) of the Export Control Act to approve a variation of an approved arrangement in relation to prescribed livestock or to vary the condition of such an approved arrangement is \$300.

Item 6 provides the charge for an application by an exporter under subsection 53(1) of the Export Control Act, on the basis of the circumstance referred to in paragraph 52(1)(b), (c) or (d) of the Export Control Act, for an exemption from the condition prescribed by the Animals Rules that prescribed livestock for export by the exporter must be prepared in accordance with an approved arrangement is \$600.

Item 7 provides the charge for an application under section 190 of the Export Control Act for a livestock export licence is \$600.

Item 8 provides the charge for an application under section 195 of the Export Control Act for a livestock export licence is \$600.

Item 9 provides the charge for an application under subsection 199(1) of the Export Control Act to make a variation in relation to a livestock export licence is \$300.

Item 10 provides the charge for an application under Division 1 of Part 9 of Chapter 6 of the Animals Rules for approval of an ESCAS is \$600. An ESCAS has the meaning provided by the Animals Rules.

Item 11 provides the charge for an application under Division 2 of Part 9 of Chapter 6 of the Animals Rules for approval of a variation of an ESCAS is \$300.

Item 12 provides the charge for an application under Division 2 of Part 3 of Chapter 9 of the Animals Rules by a veterinarian for accreditation is \$600.

Item 13 provides the charge for an application under Division 2 of Part 3 of Chapter 9 of the Animals Rules by an accredited veterinarian for renewal of the veterinarian's accreditation is \$600.

Item 14 provides the charge for an application under Division 4 of Part 3 of Chapter 9 of the Animals Rules by an accredited veterinarian for variation of the veterinarian's accreditation is \$300.

Item 15 provides the charge for an application under section 111 of the Export Control Act to register an establishment for operations to prepare any of the following for export:

- Prescribed plants or prescribed plant products
- Prescribed meat or prescribed meat products
- Prescribed milk or prescribed milk products
- Prescribed fish or prescribed fish products
- Prescribed eggs or prescribed egg products

is \$600.

Item 16 provides the charge for an application under section 116 of the Export Control Act to renew the registration of a registered establishment for operations to prepare any of the following for export:

- Prescribed plants or prescribed plant products
- Prescribed meat or prescribed meat products
- Prescribed milk or prescribed milk products
- Prescribed fish or prescribed fish products
- Prescribed eggs or prescribed egg products

is \$600.

Item 17 provides the charge for an application under section 120 of the Export Control Act to vary the registration of a registered establishment for operations to prepare any of the following for export:

- Prescribed plants or prescribed plant products
- Prescribed meat or prescribed meat products
- Prescribed milk or prescribed milk products
- Prescribed fish or prescribed fish products
- Prescribed eggs or prescribed egg products

is \$300.

Item 18 provides the charge for an application under section 150 of the Export Control Act to approve a proposed arrangement for organic goods certification operations is \$600.

The charges that are provided by section 11 are either \$300 or \$600. The two tiers reflect that applications to register or renew an item referred to in section 11 incur greater costs due to complexity of assessing applications. Applications to vary are less complex and incur a reduced charge.

These charges are prescribed for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the processing of the applications set out in section 11.

Section 12 – Charges—approved arrangements

This section provides the charges payable in relation to the development and management of approved arrangements.

The charges differ depending on the type of approved arrangement developed and managed. The charges are set out in a table in section 12. Column 1 of the table describes the types of approved arrangement and column 2 describes the corresponding charges (both full and part financial year where applicable) that apply.

Item 1 provides a charge for the development and management of an approved arrangement for operations to prepare prescribed livestock for export by sea by the holder of a livestock export licence.

The charge for each financial year, or part of a financial year, during which the approved arrangement is in force is:

- If the approved arrangement was in force on or before 1 January in the financial year—\$20,000 or
- If the arrangement is first approved after 1 January in the financial year—\$10,000.

Item 2 provides a charge for the development and management of an approved arrangement for operations to prepare prescribed livestock for export by air by the holder of a livestock export licence.

The charge for each financial year, or part of a financial year, during which the approved arrangement is in force is:

- If the approved arrangement was in force on or before 1 January in the financial year—\$10,000 or
- If the arrangement is first approved after 1 January in the financial year—\$5,000.

Item 3 provides a charge for the development and management of an approved arrangement for organic goods certification operations.

The charge for each financial year, or part of a financial year, during which the approved arrangement is in force is:

- If the approved arrangement was in force on or before 1 January in the financial year—\$7,500 or
- If the arrangement is first approved after 1 January in the financial year—\$3,750.

These charges are set out for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the development and management of approved arrangements.

Section 13 – Charges—livestock export licences and meat export licences

This section provides the charges payable in relation to livestock export licences and meat export licences.

The charges differ depending on the type of licence. The charges are set out in a table in section 13. Column 1 of the table describes the types of licence and column 2 describes the corresponding charges that apply.

Item 1 provides that the charge for a livestock export licence held by an exporter who has been granted an exemption, under paragraph 54(1)(a) of the Export Control Act, on the basis of the circumstance referred to in paragraph 52(1)(b), (c) or (d) of the Export Control Act, from the condition prescribed by the Animals Rules that prescribed livestock covered by the licence must be prepared for export in accordance with an approved arrangement.

The circumstances for an exemption are in reference to experimental purposes, exceptional circumstances or special commercial circumstances.

The charge for the financial year, or part of the financial year, during which the licence is in force is \$5,000.

Item 2 provides a charge for a meat export licence (other than a licence held by the occupier of a registered establishment referred to in item 5, 6 or 7 in the table in subsection 9(1)).

The charge for the financial year, or part of the financial year, during which the licence is in force is \$500.

These charges are prescribed for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the assessing and granting of livestock export licences and meat export licences.

Section 14 – Charges—export documents

This section provides the charges payable in relation to the issue of various export documents.

The charges differ depending on the type of document and how it is issued. The charges are set out in a table in section 14. Column 1 of the table describes the type of document and how it is issued and column 2 describes the corresponding charges that apply.

Item 1 provides a charge for the issue of an export permit to a person (who does not hold a livestock export licence) for prescribed livestock, prescribed live animals, or prescribed animal reproductive material.

The charge is \$130.

Item 2 provides a charge for the electronic issue of an export document for prescribed plants or prescribed plant products.

The charge for each export document issued for the consignment is \$38.

Item 3 provides a charge for the electronic issue of an export document for prescribed meat or prescribed meat products.

The charge for each export document issued for the consignment is \$46.

Item 4 provides a charge for the electronic issue of an export document for prescribed milk or prescribed milk products.

The charge for each export document issued for the consignment is \$15.

Item 5 provides a charge for the electronic issue of an export document for prescribed fish or prescribed fish products.

The charge for each export document issued for the consignment is \$27.

Item 6 provides a charge for the electronic issue of an export document for prescribed egg or prescribed egg products.

The charge for each export document issued for the consignment is \$27.

Item 7 provides a charge for the issue of a government certificate for goods, other than goods covered by items 1 to 6.

The charge for each export document issued for the goods is:

- If the department carries out regular assessments in relation to the goods for the purpose of assisting the Secretary to decide whether to issue a government certificate in relation to the goods under Division 3 of Part 3 of Chapter 2 of the Export Control Act—\$97 or
- In any other case—\$40.

Item 8 provides a charge for the electronic issue of a tariff rate quota certificate in relation to goods, other than prescribed meat or prescribed meat products or prescribed milk or prescribed milk products.

The charge for each tariff rate quota certificate issued for the goods is \$40.

The note below the table explains that the electronic issue of a tariff rate quota certificate for the export of prescribed meat or prescribed meat products or prescribed milk or prescribed milk products is covered by item 3 or 4 of the table and refers the reader to the definition of export document in section 6 of the Regulations.

These charges are prescribed for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the issuing of export documents.

Section 15 – Charges—third party authorised officers: prescribed plants or prescribed plant products

This section provides the charge payable in relation to the authorisation of third party authorised officers for prescribed plants or prescribed plant products.

The charge is set out in a table. Column 1 of the table describes the type of third party authorised officer and column 2 describes the charge that applies.

The charge relates to third party authorised officers who may exercise powers or perform functions in relation to the export of prescribed plants or prescribed plant products.

The charge is the amount of \$750 for each financial year, or part of a financial year, during which the authorisation of the third party authorised officer is in force.

This charge is prescribed for the purposes of subsection 11(1) of the Act. In accordance with subsection 12(2) of the Act, the Minister has certified that he is satisfied that the amount of the charge in the Regulations is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the authorisation of third party authorised officers of prescribed plants or prescribed plant products.

Section 16 – Exemptions from charges

This section provides a number of exemptions from the requirement to pay charges, for the purposes of section 14 of the Act.

Section 16 sets out the exemptions, which include exemptions for matters relating to:

- The export of disability assistance animals
- Goods to be exported by an organisation approved by the Secretary that provides aid or assistance in a foreign country
- A registered establishment that is a marine laboratory that is operated or funded by the Commonwealth or a State or Territory and the primary function of which is to research and develop export markets without engaging in commercial trade
- Goods that are stores for the use of passengers and crew, or for the service of an aircraft or vessel, on a flight or voyage from Australian territory
- Imported goods held in bond at all times before being exported
- Imported goods that are exported in the same covering in which, and with the same trade description with which, they were imported into Australian territory
- Goods consigned to an external Territory for consumption within that Territory
- Goods consigned to a resources industry structure, in certain areas set out in subparagraph 16(1)(i), for consumption on the structure
- Goods (other than prescribed livestock, prescribed live animals or prescribed animal reproductive material) to be exported in consignments of no more than 10 litres (for liquids) or 10 kilograms (for other goods)

- Goods to be exported to New Zealand, other than prescribed livestock, prescribed live animals, prescribed animal reproductive material, grain, or plants and plant products for which a certificate is required by or under a law of New Zealand.

The note after section 16 states that for the purposes of paragraph (i), a resources industry structure that is not installed is taken to be a vessel and refers the reader to the *Sea Installations Act 1987*. This note provides clarity as to when the exemption relating to goods for consumption on resources industry fixed structures and mobile units, set out in paragraph 16(1)(i), applies.

Part 4—Transitional provisions

Section 17 – Continuing approved arrangements for organic goods certification operations

This section applies in relation to an approved arrangement for organic goods certification operations if:

- The approved arrangement is a continuing approved arrangement within the meaning of section 12-2 of the *Export Control (Organic Goods) Rules 2021* and
- The charge in relation to the QM certificate to which the continuing approved arrangement relates for the financial year ending on 30 June 2021, or a part of that financial year, prescribed by item 3 of the table in section 17 of the *Export Charges (Imposition—Customs) Regulations 2015* (as in force immediately before the commencement of section 3 of the Export Control Act) had been paid before that commencement.

Subsection 17(2) provides a charge in relation to the approved arrangement for the financial year ending on 30 June 2021, or the part of that financial year, prescribed by item 3 of the table in section 12 of this instrument is taken to have been paid.

Schedule 1 – Repeals

Export Charges (Imposition—Customs) Regulation 2015

Section 1 – The whole of the instrument

This section provides for the repeal of the whole of the *Export Charges (Imposition—Customs) Regulation 2015* which is replaced by the Regulations. The Regulations moved the charges set out in the *Export Charges (Imposition—Customs) Regulation 2015* to the new legislative framework based on the Export Control Act but have not changed the amounts of those charges.

ATTACHMENT B**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

Export Charges (Imposition—Customs) Regulation 2021

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 (Imposition—Customs) Regulations 2021* (the Regulations) is to prescribe charges in relation to the export of regulated goods and matters relating to the export of regulated goods which are considered duties of customs within the meaning of section 55 of the Constitution. The Regulations would be made under the *Export Charges (Imposition—Customs) Act 2015*.

The Regulations would also repeal the *Export Charges (Imposition—Customs) Regulation 2015* which previously fulfilled this purpose. The Regulations would prescribe the same amounts for the charges as in the *Export Charges (Imposition—Customs) Regulation 2015*. However, the Regulations would specify these charges on the basis of goods and matters in the *Export Control Act 2020* (the Export Control Act), including rules made for the purposes of the Export Control Act.

On 6 March 2020 the Export Control Act received the Royal Assent. The export of certain goods is managed under the Export Control Act. The Export Control Act and other supporting legislation provide the basis for ensuring exports of meat, seafood, dairy, plants, live animals and other kinds of goods meet the requirements of importing countries.

To support the enactment of the Export Control Act, the *Export Charges (Imposition—General) Act 2015*, the *Export Charges (Imposition—Customs) Act 2015* and the *Export Charges (Imposition—Excise) Act 2015* were amended. These Acts do not set the amounts of the charges and only authorise the imposition of charges prescribed in regulations.

Given the broad nature of the amendments, a remade regulation in the form of the Regulations was considered more appropriate than amending the *Export Charges (Imposition—Customs) Regulation 2015*.

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 David Littleproud MP

Minister for Agriculture, Drought and Emergency Management