

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

Imported Food Charges (Imposition—Customs) Act 2015

*Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1)
Regulations 2023*

Legislative Authority

The *Imported Food Charges (Imposition—Customs) Act 2015* (the Act) is an Act to impose, as taxes, charges in relation to matters connected with the administration of the *Imported Food Control Act 1992* (the Imported Food Control Act), so far as those charges are duties of customs, and for related purposes. The Imported Food Control Act provides for the inspection and control of food imported into Australia, and for related purposes. The Act does not set the amounts of the charges and only authorises the imposition of charges prescribed in regulations.

Subsections 6(1) and 6(4) of the Act provide that the regulations may prescribe a charge in relation to a prescribed matter connected with the administration of the Imported Food Control Act, but only so far as that charge is a duty of customs within the meaning of section 55 of the Constitution. Subsection 6(3) of the Act provides that multiple charges under subsection 6(1) may be prescribed in relation to the same matter, and a single charge under subsection 6(1) may be prescribed in relation to multiple matters.

Subsection 7(1) of the Act provides that the regulations may prescribe a charge under subsection 6(1) by specifying an amount as the charge or the method for calculating the amount of a charge. Subsection 7(2) provides that, before the Governor-General makes regulations under subsection 6(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 matter.

Section 9 of the Act provides that the regulations may provide for exemptions from a charge prescribed under subsection 6(1).

Section 10 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.

For the purposes of subsection 7(2) of the Act, the Minister for Agriculture, Fisheries and Forestry has certified that he is satisfied that the amount of the charges in the *Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) are set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the prescribed matters to which they relate. The financial modelling of the Department of Agriculture, Fisheries and Forestry (the department) has confirmed that the prices of the charges in the Amendment Regulations are designed to recover no more than the Commonwealth's likely costs in connection with the matters to which the charges relate.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Purpose

The purpose of the Amendment Regulations is to amend the *Imported Food Charges (Imposition—Customs) Regulation 2016* (the Principal Regulation) to ensure more effective funding arrangements for certain matters connected with the administration of the Imported Food Control Act by amending charges to support the cost recovery of related regulatory functions.

The Amendment Regulations implement amended charges from 1 July 2023, to reflect the complexity, risk and effort associated with certain matters relating to the inspection and control of food imported into Australia. The Amendment Regulations also improve the effectiveness of the imported food control charging framework by amending the composition of charges relating to compliance agreements and introducing annual indexation of charges.

Background

Under the Imported Food Control Act, the department inspects food that is imported into Australia to assess whether it meets Australian requirements for public health and safety, and whether it complies with the Australia New Zealand Food Standards Code and country of origin food labelling standards. The department recovers the costs of undertaking these regulatory functions through fees and charges, imposed in accordance with the Australian Government Charging Framework.

Charging is undertaken under the Act, the *Imported Food Charges (Imposition—General) Act 2015* and the *Imported Food Charges (Imposition—Excise) Act 2015*. These Acts provide the tax legislation framework necessary to support cost recovery charges. Specific charges and fees for imported food regulatory functions are prescribed in the Principal Regulation, the *Imported Food Charges (Imposition—General) Regulation 2016* (the General Regulation) and the *Imported Food Control Regulations 2019* (the Imported Food Regulations).

The General Regulation prescribes charges in relation to matters connected with the administration of the Imported Food Control Act which are considered neither duties of customs nor duties of excise within the meaning of section 55 of the Constitution. Where a charge is prescribed under both the Principal Regulation and General Regulation, only one charge will apply, and it will be under the regulation for which it is valid. The Imported Food Regulations prescribes payable amounts for certain chargeable services under the Imported Food Control Act.

The *Imported Food Charges (Collection) Regulation 2015* is made under the *Imported Food Charges (Collection) Act 2015* and provides for the collection of imported food charges.

Impact and Effect

The Amendment Regulations provide for the new charges to be implemented from 1 July 2023.

The new charges in the Amendment Regulations were determined through a comprehensive internal review of the regulatory activities that the department currently undertakes under the imported food control framework.

The Amendment Regulations are necessary because the existing charges are no longer sufficient to recover the costs of Australia's regulatory effort in relation to managing imported food safety risks. Imported food control cost recovery arrangements were last comprehensively reviewed in 2015. Charges relating to the imported food control framework have remained unchanged since that time. However, the costs of delivering the relevant regulatory functions have increased due to inflationary impacts on staff wages, supplier and operating costs to manage new and evolving risks.

The Amendment Regulations are intended to re-align charges with the actual cost of delivering these regulatory activities. This is crucial to allow the department to manage imported food safety risks efficiently and effectively.

The new charges are based on the modelling set out in the 2023-24 Biosecurity Cost Recovery Implementation Statement (CRIS) and are no higher than the department's expected costs of delivering the relevant regulatory activities relating to imported food control.

The Office of Impact Analysis (OIA) determined that an Impact Analysis Assessment was required to assess the regulatory burden on affected parties. In undertaking this analysis, consideration was given to the views of stakeholders, and how the department intends to evaluate and consider the implementation of changes to regulatory charging. The Impact Analysis Assessment was approved in June 2023, and released on the OIA's website.

Consultation

Public consultation on the changes was conducted using the Have Your Say platform on the department's website from 27 March to 24 April 2023. An extension to 1 May 2023 was granted to several stakeholders who requested further time. The department received 49 submissions in response to the release of a consultation paper and invitation to provide feedback via the Have Your Say survey platform on the department's website.

Targeted consultation with all key industry groups was conducted through the department's various industry consultative committees (consisting of 7 formal meetings) as well as direct engagement with industry stakeholders. An online public open forum was also held, during which the department engaged with more than 76 industry participants.

Feedback received through these avenues was considered by the department and the Minister for Agriculture, Fisheries and Forestry (the Minister), and informed the development of the 2023-24 CRIS. The final CRIS was certified by the Secretary of the department and approved by the Minister. The CRIS was published on the department's website in June 2023.

The Department of the Prime Minister and Cabinet, the Department of Finance, the Department of Foreign Affairs and Trade, the Department of Home Affairs and the Australian Bureau of Statistics have been consulted on the changes.

Details and Operation

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

The Amendment Regulations commence on 1 July 2023.

Details of the Amendment Regulations are set out in Attachment A.

Other

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2022*. A full Statement of Compatibility with Human Rights is set out in Attachment B.

Details of the *Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1) Regulations 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on 1 July 2023.

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

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Imported Food Charges (Imposition—Customs) Act 2015* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Regulations. This enables the amendment of the *Imported Food Charges (Imposition—Customs) Regulation 2015* (the Principal Regulation).

Schedule 1 – Amendments

Item [1] – Section 6

Section 6 of the Principal Regulation is made for the purposes of subsection 6(1) of the Act and provides for charges payable in relation to imported food matters. An “imported food matter” means a matter connected with the administration of the *Imported Food Control Act 1992* (the Imported Food Control Act) (see section 5 of the Principal Regulation).

This item omits the words “For subsection 6(1)” and substitutes “(1) For the purposes of subsection 6(1)” in section 6 of the Principal Regulation.

This amendment is consequential to the insertion of new subsection 6(2) of the Principal Regulation, made by item [5] of this Schedule.

Item [2] – Section 6 (table item 1, column 2)

Section 6 of the Principal Regulation is made for the purposes of subsection 6(1) of the Act and provides for charges payable in relation to imported food matters. The charges are listed in the table in section 6, where column 1 of the table describes the imported food matter and column 2 describes the corresponding charges that apply for each matter.

Table item 1 provides the charge for an application to enter into a compliance agreement.

This item omits and substitutes the charge described in column 2 of table item 1 in section 6 of the Principal Regulation. The charge is increased from \$180 to \$194 for an application to enter into a compliance agreement.

A “compliance agreement” means a compliance agreement entered into under section 35A of the Imported Food Control Act (see section 5 of the Principal Regulation and section 3 of the Imported Food Control Act). Under section 35A of the Imported Food Control Act, the Secretary may, on behalf of the Commonwealth, enter into an agreement (a “compliance agreement”) with a person in connection with:

- the application of particular procedures in respect of food that may be imported into Australia in accordance with the agreement;
- the keeping of records by the person in respect of the person’s compliance with those procedures; and
- the supervision, monitoring and testing of the person’s compliance with those procedures.

This charge is prescribed for the purposes of subsection 6(1) of the Act. In accordance with subsection 7(2) of the Act, the Minister for Agriculture, Fisheries and Forestry has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth’s likely costs in connection with the matter to which the charge relates.

Item [3] – Section 6 (table 2)

Section 6 of the Principal Regulation is made for the purposes of subsection 6(1) of the Act and provides for charges payable in relation to imported food matters. The charges are listed in the table in section 6, where column 1 of the table describes the imported food matter and column 2 describes the corresponding charges that apply for each matter.

This item repeals and substitutes table item 2 in section 6 of the Principal Regulation.

New table item 2 provides a charge for the development and administration of arrangements for the performance of activities by a person on behalf of the Commonwealth in accordance with a compliance agreement (the relevant agreement). The charge applies for each financial year, or part of financial year, during which the relevant agreement is in force. The charge differs depending on:

- whether the person covered by the relevant agreement is also covered by one or more other compliance agreements (the other agreements) that are in force; and
- whether the relevant agreement or any of the other agreements are in force before 1 January in the financial year.

As mentioned above, “compliance agreement” has the same meaning as in the Imported Food Control Act, that is, a compliance agreement entered into under section 35A of the Imported Food Control Act (see section 5 of the Principal Regulation and section 3 of the Imported Food Control Act).

This amendment is intended to reflect the increase in the complexity and associated risk for the importation of food, particularly due to shifting cargo pathways and trade patterns, as well as increases in seasonal pests. Where a person is covered by multiple compliance agreements, additional effort is associated with the development and administration of arrangements for the performance of activities under such agreements, together with the need for compliance monitoring of those agreements by the department. For this reason, the charge for a person who is covered by multiple compliance agreements at any time during the financial year is higher than the charge for a person who is only covered by one compliance agreement during the financial year.

Where a person has paid the charge under this item, for a financial year, or part of a financial year, in relation to a compliance agreement, then they are not liable to pay that charge in relation to another compliance agreement, for that financial year, or part of a financial year (see new subsection 8(2) of the Principal Regulation, as amended by item [9] of this Schedule). For example, if a person is covered by multiple compliance agreements, then they are liable to pay the charge that relates to multiple compliance agreements. The person is not liable to pay the charge multiple times for each of the compliance agreements that they are covered by.

This charge is prescribed for the purposes of subsection 6(1) of the Act. In accordance with subsection 7(2) of the Act, the Minister for Agriculture, Fisheries and Forestry has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth’s likely costs in connection with the matter to which the charge relates.

Item [4] – Section 6 (note)

This item omits the words “section 7” and substitutes “section 8” in the note in section 6 of the Principal Regulation.

The amended note in section 6 explains that a person may be exempt from liability to pay a prescribed charge under section 8 of the Principal Regulation.

Item [5] – At the end of section 6

This item inserts new subsection 6(2) in the Principal Regulation.

New subsection 6(2) applies where an amount of a charge specified in paragraph (a) or (c) of table item 2 in subsection 6(1) of the Principal Regulation (as amended by item [3] of this Schedule) is increased under new section 6A (as amended by item [6] of this Schedule). In such circumstances, this increased charge is used for the purposes of working out the amount of the charge under paragraph (b) or (d) of table item 2 in subsection 6(1) of the Principal Regulation.

This amendment clarifies that the indexation of charges under new section 6A also affects the calculation of the amount of the charge under paragraph (b) of table item 2 in subsection 6(1) of the Principal Regulation.

Item [6] – After section 6

This item inserts new section 6A in the Principal Regulation. New section 6A provides for the indexation of charges.

New subsection 6A(1) applies where the indexation factor for an indexation day is greater than 1. Where this occurs, the dollar amounts mentioned in the table in subsection 6(1) of the Principal Regulation (as amended by items [2] and [3] of this Schedule) are replaced by the amount worked out using the formula in new subsection 6A(1). The formula requires the dollar amount of the charge immediately before the indexation day to be multiplied by the indexation factor for the indexation day.

Under new subsection 6A(2), the amount worked out under new subsection 6A(1) is rounded to the nearest whole dollar, and by rounding 50 cents upwards.

New subsection 6A(3) provides for the formula that is used to work out the indexation factor for an indexation day. The formula requires the index number for the reference quarter to be divided by the index number for the base quarter.

Under new subsection 6A(4), the indexation factor is worked out to 3 decimal places, and by rounding up if the fourth decimal place is 5 or more.

New subsection 6A(5) requires the amounts to be worked out under new section 6A to use only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index. Such amounts are worked out by disregarding index

numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

New subsection 6A(6) provides for the following definitions of terms used in new section 6A:

- **base quarter** means the last December quarter before the reference quarter;
- **December quarter** means a period of 3 months starting on 1 October;
- **indexation day** means 1 July 2024 and each later 1 July;
- **index number**, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter;
- **reference quarter** means the December quarter immediately before the indexation day.

Item [7] – Section 7

Section 7 of the Principal Regulation is made for the purposes of section 8 of the Act and provides for persons liable to pay charges in relation to a prescribed imported food matter.

This item omits the words “section 6” and substitutes “subsection 6(1)” where it first occurs in section 7 of the Principal Regulation.

This amendment is consequential to the insertion of new subsection 6(1), made by item [1] of this Schedule.

Item [8] – Subsection 8(1)

Section 8 of the Principal Regulation is made for the purposes of section 9 of the Act and provides for exemptions from prescribed charges. Subsection 8(1) provides for an exemption from the prescribed charge in relation to an application to enter into a compliance agreement.

This item omits the words “section 6” and substitutes “subsection 6(1)” in subsection 8(1) of the Principal Regulation.

This amendment is consequential to the insertion of new subsection 6(1), made by item [1] of this Schedule.

Items [9] and [10] – Subsection 8(2), paragraphs 8(2)(c) and (d)

Section 8 of the Principal Regulation is made for the purposes of section 9 of the Act and provides for exemptions from prescribed charges. Subsection 8(2) currently provides for exemptions from the prescribed charge in relation to a compliance agreement, where any of the following charges have been paid for a financial year, or part of a financial year:

- the charge prescribed by table item 2 of section 6 of the Principal Regulation, in relation to another compliance agreement;
- the charge prescribed by table item 2 of section 6 of the *Imported Food Charges (Imposition—General) Regulation 2015* (the General Regulation), in relation to another compliance agreement;
- the charge prescribed by table item 13 of section 9 of the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Biosecurity Customs Regulation);

- the charge prescribed by table item 13 of section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity General Regulation).

Item [9] omits the words “section 6” and substitutes “subsection 6(1)”, wherever the words “section 6” occur in subsection 8(2) of the Principal Regulation.

Item [10] omits the words “section 9” and substitutes “subsection 9(1)” in paragraphs 8(2)(c) and (d) of the Principal Regulation.

The amendments are consequential to:

- the insertion of new subsection 6(1) of the Principal Regulation, made by item [1] of this Schedule;
- the amendment of subsection 6(1) of the General Regulation, made by the *Imported Food Charges (Imposition—General) Amendment (2023 Measures No. 1) Regulations 2023*;
- the amendment of subsection 9(1) of the Biosecurity Customs Regulation, made by the *Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1) Regulations 2023*;
- the amendment of subsection 9(1) of the Biosecurity General Regulation, made by the *Biosecurity Charges Imposition (General) Amendment (2023 Measures No. 1) Regulations 2023*.

Statement of Compatibility with Human Rights

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

Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1) Regulations 2023

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 *Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) is to ensure more effective funding arrangements for certain matters connected with the administration of the *Imported Food Control Act 1992* by amending charges to support the cost recovery of related regulatory functions.

The Amendment Regulations are made under the *Imported Food Charges (Imposition—Customs) Act 2015* (the Act). The Act does not set the amounts of the charges and only authorises the imposition of charges prescribed in regulations.

The Amendment Regulations amend the *Imported Food Charges (Imposition—Customs) Regulation 2015* to implement amended charges from 1 July 2023, to reflect the complexity, risk and effort associated with certain matters relating to the inspection and control of food imported into Australia. The Amendment Regulations also improve the effectiveness of the imported food charging framework by amending the composition of charges relating to compliance agreements and introducing annual indexation of charges.

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.

**Senator the Hon. Murray Watt
Minister for Agriculture, Fisheries and Forestry**