

## **EXPLANATORY STATEMENT**

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

*Biosecurity Act 2015*

*Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024*

### **Legislative Authority**

The *Biosecurity Act 2015* (the Act) provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment.

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

Paragraph 593(a) of the Act provides that the *Biosecurity Regulation 2016* (the Principal Regulation) may prescribe the time when a specified cost-recovery charge is due and payable. Paragraph 593(b) of the Act provides that the Principal Regulation may prescribe one or more persons who are liable to pay a specified cost-recovery charge.

Section 9 of the Act defines a cost-recovery charge to include a charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2015* (the Biosecurity Customs Act) or the *Biosecurity Charges Imposition (General) Act 2015* (the Biosecurity General Act).

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**

From 1 October 2024, a new cost-recovery charge is established under the *Biosecurity Charges Imposition (Customs) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* and the *Biosecurity Charges Imposition (General) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024*. The new charge extends industry cost-recovery arrangements to low value goods that are the subject of a self-assessed clearance declaration where the goods have been brought into Australian territory. This gives effect to one aspect of the government's election commitment to sustainably fund the Commonwealth biosecurity system and an associated 2023-24 Federal Budget measure.

The *Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* (the Amendment Regulations) amend the Principal Regulation to facilitate the implementation of the new cost-recovery charge. In particular, the Amendment Regulations identify who is liable to pay the new cost-recovery charge under the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Biosecurity Customs Regulation) and the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity General Regulation), and when the charge must be paid.

## Background

The Department of Agriculture, Fisheries and Forestry (the department) administers the Biosecurity Act to manage biosecurity threats that may cause harm to human, animal or plant health or the environment. The department recovers the costs of undertaking these regulatory functions through fees and charges, imposed in accordance with the Australian Government Charging Framework. The Australian Government Charging Framework sets the rules and requirements on how a regulatory body determines costs and sets charges, and how it will charge for regulatory activities.

Charging is undertaken under the Act, the Biosecurity General Act, the Biosecurity Customs Act and the *Biosecurity Charges Imposition (Excise) Act 2015* (Biosecurity Excise Act). These Acts provide the tax legislation framework necessary to support cost-recovery charges. Specific charges and fees for biosecurity regulatory functions are prescribed in the Principal Regulation, the Biosecurity General Regulation and the Biosecurity Customs Regulation.

The Biosecurity Customs Regulation prescribes charges in relation to matters connected with the administration of the Act which are considered duties of customs within the meaning of section 55 of the Constitution. The Biosecurity General Regulation prescribes charges in relation to matters connected with the administration of the 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 Biosecurity Customs Regulation and the Biosecurity General Regulation, only one charge will apply and it will be under the regulation for which it is valid. No charges are prescribed under the Biosecurity Excise Act.

## Impact and Effect

Currently, imported goods valued at or below AUD\$1000 (low value goods) which arrive by air or sea cargo must be reported to the Australian Border Force using a self-assessed clearance declaration. Self-assessed clearance declarations must be lodged electronically through the Integrated Cargo System before the goods arrive in Australia. At present, in the vast majority of cases, no fees or charges are imposed in respect of biosecurity activities conducted in relation to low value goods. These costs are being met through the department's budget appropriation rather than by industry, as is the case for goods valued above AUD\$1000 (high value goods).

Amendments to the Biosecurity Customs Regulation and the Biosecurity General Regulation are commencing at the same time as the Amendment Regulations to establish a new charge of thirty six cents (\$0.36) in respect of biosecurity matters for each self-assessed clearance declaration where the associated low value goods arrive in Australia by sea or air cargo. An exemption from liability applies where a person gives less than 278 declarations in the quarter (that is, where the aggregate amount for self-assessed clearance declarations in a quarter is less than \$100).

The Amendment Regulations facilitate the new cost-recovery charge by providing that the person who is liable to pay the new charge is the person who gave the self-assessed clearance declaration. The effect of the amendments, together with the amendments to the Biosecurity Customs Regulation and the Biosecurity General Regulation, is that the person who gave the self-assessed clearance declaration will be liable to pay, quarterly in arrears, the aggregate amount equal to the number of self-assessed clearance declarations they have given in the

quarter multiplied by thirty six cents (\$0.36) (except where the total number of such declarations given is less than 278 in the quarter). This amount is to be remitted to the department within 30 days after the end of the remittance period.

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 was approved as adequate in May 2023, and released on the OIA's website.

## **Consultation**

The department undertook an open public consultation process on options to deliver a sustainably funded biosecurity system, which included the option of expanding industry cost recovery to low value goods, before the Impact Analysis Assessment was completed. Further industry consultation on the design of the new cost-recovery charge commenced on 30 October 2023, with the first stage on design elements completed in mid-January. This involved a public consultation process, targeted engagement via e-mail communication, Import Industry Advice Notices, and updates to the department's website. The department held meetings with key industry representative groups and companies to discuss and clarify the proposed charges. A cost recovery implementation statement has been released. Further industry consultations conducted on 22 May 2024 raised implementation concerns in relation to the need to provide a minimum of 30 days' notice to customers prior to a change in their charging arrangements. Concerns raised also related to data verification, industry compliance, invoicing and providing accurate remittance to the department. To address the risks and concerns raised by industry, the intention is for the proposed charge to commence on 1 October 2024.

The new charge was announced on 9 May 2023 as part of the Government's 2023-24 Biosecurity Sustainable Funding budget package. An interdepartmental committee was established to consider this package, with representation from all central agencies together with relevant other departments (home affairs, infrastructure, environment and foreign affairs and trade).

## **Details/ Operation**

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

The Amendment Regulations commence on 1 October 2024.

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 2011*. A full Statement of Compatibility with Human Rights is set out in [Attachment B](#).

**Details of the *Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the instrument is the *Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* (the Amendment Regulations).

**Section 2 – Commencement**

This section provides that the Amendment Regulations commence on 1 October 2024.

The note below the table provides that the table relates only to the provisions of the Amendment Regulations as originally made. The table 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 *Biosecurity Act 2015* (the Act).

**Section 4 – Schedules**

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

## Schedule 1 – Amendments

### *Biosecurity Regulation 2016*

#### **Item [1] – After subsection 108(4A)**

Section 108 of the Principal Regulation prescribes, for paragraph 593(a) of the Act, the time when certain cost-recovery charges are due and payable.

Section 9 of the Act defines a **cost-recovery charge** to include a charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2015* (the Biosecurity Customs Act) or the *Biosecurity Charges Imposition (General) Act 2015* (the Biosecurity General Act).

The *Biosecurity Charges Imposition (Customs) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* and the *Biosecurity Charges Imposition (General) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* are made pursuant to the Biosecurity Customs Act and the Biosecurity General Act respectively and establish a new cost-recovery charge. The new cost-recovery charge is payable for biosecurity matters in relation to low value goods brought into Australian territory that are the subject of a self-assessed clearance declaration, subject to an exemption from liability where a person gives less than 278 declarations in the quarter.

**Self-assessed clearance declaration** is defined in the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Biosecurity Customs Regulation) and the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity General Regulation), as amended on 1 October 2024, to have the same meaning as in the *Customs Act 1901*, with the effect that it refers to declarations given in relation to certain low value goods (currently meaning goods in a consignment that have a value not exceeding \$1000). The new cost-recovery charge is prescribed in the table in subsection 9(1) of the Biosecurity Customs Regulation and in subsection 9(1) of the Biosecurity General Regulation.

This item inserts new subsection 108(4B) after subsection 108(4A) of the Principal Regulation. New subsection 108(4B) prescribes the time when this new cost-recovery charge is due and payable. The intention is that the charge is due and payable by reference to the point in time at which the self-assessed clearance declaration is given and the quarter of the financial year in which that occurs.

New subsection 108(4B) of the Principal Regulation provides that:

- if the self-assessed clearance declaration was given during the period of 3 months beginning on 1 January in a year, the new cost-recovery charge is due and payable on or before the 30<sup>th</sup> day after the end of that period;
- if the self-assessed clearance declaration was given during the period of 3 months beginning on 1 April in a year, the new cost-recovery charge is due and payable on or before the 30<sup>th</sup> day after the end of that period;
- if the self-assessed clearance declaration was given during the period of 3 months beginning on 1 July in a year, the new cost-recovery charge is due and payable on or before the 30<sup>th</sup> day after the end of that period; and
- if the self-assessed clearance declaration was given during the period of 3 months beginning on 1 October in a year, the new cost-recovery charge is due and payable on or before the 30<sup>th</sup> day after the end of that period.

The effect of the amendments is that the new cost-recovery charge is payable quarterly in arrears. For example, for self-assessed clearance declarations given during the period of 1 July 2025 to 30 September 2025, the new cost-recovery charge is due and payable on or before 30 October 2025.

The related amendments to the Biosecurity Customs Regulation and the Biosecurity General Regulation would provide an exemption from liability to pay the charge where a person gives less than 278 declarations in the quarter (that is, where the aggregate amount for self-assessed clearance declarations in a quarter is less than \$100). The related amendments to the Biosecurity Customs Regulation and the Biosecurity General Regulation also ensure that the charge is only payable if the goods covered by the self-assessed clearance declaration are brought into Australian territory.

### **Item [2] – Subsection 108(5)**

This item inserts the words “or (4B)” after the words “subsection (4A)” in subsection 108(5) of the Principal Regulation.

The effect of this item is to exclude proposed new subsection 108(4B), inserted by item [1] of this Schedule, from subsection 108(5) of the Principal Regulation. Subsection 108(5) provides for the time when a charge is due and payable if not otherwise specified in section 108 of the Principal Regulation.

This is a consequential amendment to ensure that subsection 108(5) of the Principal Regulation does not apply to the proposed new cost-recovery charge for low value goods that are the subject of a self-assessed clearance declaration, because new subsection 108(4B) provides for when that charge is due and payable.

### **Item [3] – After paragraph 109(4)(a)**

This item inserts new paragraph 109(4)(aa) into subsection 109(4) of the Principal Regulation to prescribe the person who is liable to pay for the new cost-recovery charge for low value goods that are the subject of a self-assessed clearance declaration.

New paragraph 109(4)(aa) of the Principal Regulation provides that the person who is liable to pay the new cost-recovery charge is the person who gave the self-assessed clearance declaration. This could be the owner of the goods, or a person acting on behalf of the owner, such as the person importing the goods, a customs agent, or a cargo reporter (freight forwarder or international express carrier).

These amendments facilitate the new cost-recovery charge relating to low value goods in the Biosecurity Customs Regulation and the Biosecurity General Regulation by making clear who is liable to pay the charge and when the charge is due and payable.

## Statement of Compatibility with Human Rights

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

### ***Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024***

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 *Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* (the Amendment Regulations) amend the *Biosecurity Regulation 2016* to facilitate the implementation of a new cost-recovery charge from 1 October 2024, relating to biosecurity matters in respect of low value goods brought into Australian territory that are the subject of a self-assessed clearance declaration. The new cost-recovery charge gives effect to one aspect of the government's election commitment to sustainably fund the Commonwealth biosecurity system and an associated 2023-24 Federal Budget measure.

The Amendment Regulations facilitate the implementation of the new cost-recovery charge by identifying who is liable to pay the charge, and when the liability to pay arises.

The Amendment Regulations are made under the *Biosecurity Act 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.

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