

## **EXPLANATORY STATEMENT**

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

*Biosecurity Charges Imposition (Customs) Act 2015*

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

### **Legislative Authority**

The *Biosecurity 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 *Biosecurity Act 2015* (the Biosecurity Act), so far as those charges are duties of customs, and for related purposes. The Biosecurity 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. The Act does not set the amounts of the charges and only authorises the imposition of charges prescribed in regulations.

Subsections 7(1) and 7(4) of the Act provide that the regulations may prescribe a charge in relation to a prescribed matter connected with the administration of the Biosecurity Act, but only so far as that charge is 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 matter, and a single charge under subsection 7(1) may be prescribed in relation to multiple matters.

Subsection 8(1) of the Act provides that the regulations may prescribe a charge under subsection 7(1) by specifying an amount as the charge or the method for calculating the amount of the charge. Subsection 8(2) provides that, before the Governor-General makes 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 matter.

Section 10 of the Act provides that the regulations may provide for exemptions from a charge prescribed under subsection 7(1).

Section 12 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 8(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 *Biosecurity Charges Imposition (Customs) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* (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 give 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 by imposing a new cost-recovery charge in respect of biosecurity activities conducted in relation to low value goods brought into Australian territory that are the subject of a self-assessed clearance declaration.

## **Background**

The department administers the Biosecurity Act to manage biosecurity risks 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.

Charging is undertaken under the Act, the *Biosecurity Charges Imposition (Excise) Act 2015* (the Biosecurity Excise Act) and the *Biosecurity Charges Imposition (General) Act 2015*. These Acts provide the tax legislation framework necessary to support cost-recovery charges. Specific charges and payable amounts for biosecurity regulatory functions are prescribed in the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Principal Regulation) and the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity General Regulation).

Under the biosecurity cost recovery framework, the Biosecurity General Regulation prescribes charges in relation to matters connected with the administration of the Biosecurity 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 Biosecurity General Regulation, only one charge will apply, and it will be under the regulation for which it is valid. The *Biosecurity Regulation 2016* (the Biosecurity Regulation) identifies who is liable to pay a cost-recovery charge and when the liability to pay arises. No charges are prescribed under the Biosecurity Excise Act.

## **Impact and Effect**

The Amendment Regulations and the *Biosecurity Charges Imposition (General) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* amend the Principal Regulation and the Biosecurity General Regulation respectively to extend current industry biosecurity 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 by air or sea cargo.

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 Australian territory. At present, in the vast majority of cases, no industry fees or charges are imposed on biosecurity activities conducted in relation to low value goods. These costs are currently met through the department's budget appropriation, unlike the situation with goods valued above AUD\$1000 (high value goods).

The Amendment Regulations impose a 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 Australian territory by sea or air cargo. Items such as personal goods that accompany a traveller and international postal items are excluded from this measure.

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 within a quarter is less than \$100).

Related amendments in the *Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* facilitate the implementation of the new cost-recovery charge by amending the Biosecurity Regulation to identify who is liable to pay the new cost-recovery charge under the Principal Regulation and the Biosecurity General Regulation, and when the charge must be paid.

The effect of the Amendment Regulations, together with the amendments to the Biosecurity General Regulation and the Biosecurity Regulation, is that the person who gave the self-assessed clearance declarations is 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 is less than 278 in the quarter). This amount is required to be remitted to the department within 30 days after the end of the remittance period.

The Amendment Regulations provide for the new charge to be implemented from 1 October 2024.

The new charge is based on a costing approach conducted by the department consistent with the Australian Government Charging Framework, which sets the rules and requirements on how a regulatory body determines costs and sets charges. The charge is no higher than the department's expected costs of delivering the biosecurity regulatory functions associated with or conducted in relation to low value goods.

It is necessary to provide for the new charge in the Principal Regulation rather than the Act to allow flexibility for prices to be amended as necessary to ensure only the efficient costs of carrying out regulatory activities are recovered.

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 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 2024. 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 cost-recovery 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 central agencies and other relevant portfolios (home affairs, infrastructure, environment and foreign affairs and trade).

## Details and 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 Charges Imposition (Customs) 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 Charges Imposition (Customs) 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. It will not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note clarifies 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 Charges Imposition (Customs) 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 Charges Imposition (Customs) Regulation 2016*

#### **Item [1] – Section 6**

Section 6 of the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Principal Regulation) is amended to define terms.

This item inserts definitions for the terms ***low value goods*** and ***self-assessed clearance declaration***.

Under the amendment to section 6 of the Principal Regulation, ***low value goods*** is defined as goods of the kind referred to in paragraph 68(1)(f) of the *Customs Act 1901* (the Customs Act). Paragraph 68(1)(f) of the Customs Act provides that low value goods are goods, other than prescribed goods, that are included in a consignment consigned otherwise than by post by one person to another and that are all transported to Australia in the same ship or aircraft and that have a value not exceeding \$250 or such other amount as is prescribed in the regulations. The prescribed amount is \$1000 under section 26 of the *Customs Regulations 2015*. The effect of this definition is that items such as personal goods that accompany a traveller and international postal items are excluded.

Under the amendment to section 6 of the Principal Regulation, a ***self-assessed clearance declaration*** has the same meaning as in the Customs Act. Subsection 4(1) of the Customs Act provides that a ***self-assessed clearance declaration*** means a declaration given under section 71 of the Customs Act in the circumstances mentioned in section 71AAAF of the Customs Act. Section 71 of the Customs Act relevantly provides that a person to whom section 71AAAF applies must give information in the circumstances mentioned in section 71AAAF. Section 71AAAF of the Customs Act provides that the owner of specified low value goods, or a person acting on behalf of the owner, must give a self-assessed clearance declaration under section 71 containing the information that is set out in an approved statement. Subsection 4(1) of the Customs Act provides that an approved statement means a statement approved under section 4A of the Customs Act. Self-assessed clearance declarations are given electronically through the Integrated Cargo System before the goods arrive in Australia.

These new terms are used in new table item 2A of subsection 9(1) inserted by item [2] of this Schedule.

#### **Item [2] – Subsection 9(1) (after table item 2)**

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and provides for charges payable in relation to biosecurity matters. The charges are listed in the table in subsection 9(1), where column 1 of the table describes the biosecurity matter and column 2 describes the corresponding charges that apply for each matter.

This item inserts new item 2A in the table in subsection 9(1) of the Principal Regulation. Column 1 describes the biosecurity matter as “risk profiling, surveillance, monitoring compliance and administration of other biosecurity matters” in relation to low value goods

that are the subject of a self-assessed clearance declaration and that have been brought into Australian territory.

Column 2 of new table item 2A in subsection 9(1) provides that the charge for each self-assessed clearance declaration is \$0.36.

Where low value goods are the subject of a self-assessed clearance declaration but are not brought into Australian territory, the new charge does not apply.

The terms *low value goods* and *self-assessed clearance declaration* are defined in section 6 of the Principal Regulation as amended by item [1] of this Schedule. *Biosecurity matter* is defined in section 6 of the Principal Regulation to mean a matter connected with the administration of the *Biosecurity Act 2015*.

The new charge is prescribed for the purposes of subsection 7(1) of the Act. In accordance with subsection 8(2) of the Act, the Minister for Agriculture, Fisheries and Forestry has certified that he is satisfied that the amount of the charge in the Amendment Regulations is 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 of Agriculture, Fisheries and Forestry (the department) has confirmed that the charge in this item is designed to recover no more than the Commonwealth's likely costs in connection with the matters to which the charge relates.

### **Item [3] – Subsection 9A(2)**

Section 9A in the Principal Regulation provides for the indexation of charges.

Subsection 9A(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 9(1) of the Principal Regulation would be replaced by the amount worked out using the formula in subsection 9A(1). The formula requires the dollar amount of a charge immediately before the indexation day to be multiplied by the indexation factor for the indexation day.

Under current subsection 9A(2), the amount worked out under subsection 9A(1) is rounded to the nearest whole dollar, and by rounding 50 cents upwards.

This item repeals and substitutes subsection 9A(2). New subsection 9A(2) provides that the amount worked out under subsection 9A(1) is rounded to:

- (a) if the amount is below \$1 – the nearest cent (rounding 0.5 cents upwards); or
- (b) in any other case – the nearest whole dollar (rounding 50 cents upwards).

This amendment is consequential to the new charge of \$0.36 that applies in relation to self-assessed clearance declarations inserted by item [2] of this Schedule, as it is the only charge in subsection 9(1) that is less than one dollar. The amendment ensures that an amount that is less than one dollar is rounded to the nearest cent rather than the nearest whole dollar.

### **Item [4] – After subsection 9A(6)**

This item inserts new subsection 9A(6A) after subsection 9A(6) of the Principal Regulation.

New subsection 9A(6A) provides that if the dollar amount mentioned in item 2A of the table in subsection 9(1) is replaced under section 9A on an indexation day, the replacement amount applies in relation to low value goods that are the subject of a self-assessed clearance declaration given on or after that day.

The purpose of this amendment is to clarify the application of annual indexation to the new charge that applies in relation to self-assessed declarations inserted by item [2] of this Schedule. The amendment ensures that annual indexation (if applicable) applies to low value goods that are the subject of a self-assessed clearance declaration given after the indexation day (that is, 1 July of a year), regardless of when the goods enter Australian territory.

#### **Item [5] - After subsection 10(2)**

Section 10 of the Principal Regulation provides for exemptions from charges for the purposes of section 10 of the Act, which provides that a regulation may provide for exemptions from a charge prescribed under the Act.

This item inserts new subsection 10(2A) of the Principal Regulation, which provides that, for the purposes of section 10 of the Act, the charge prescribed by item 2A of the table in subsection 9(1) is not payable in relation to a self-assessed clearance declaration given by a person during the 3 month period commencing on 1 January, 1 April, 1 July or 1 October in a year if the total number of such declarations given by the person during the 3 month period is less than 278. At the time of commencement of this item, the aggregate amount payable for 278 declarations is \$100.08.

This amendment ensures that a person is not liable to pay a charge relating to self-assessed clearance declarations under new table item 2A in subsection 9(1) in a quarter if the person has given less than 278 declarations in the quarter. The exemption from liability is set at this number because, at the time of these amendments, this amounts to a total liability for the quarter of less than \$100. The rationale behind this exemption is that it is not economical for the department to collect small amounts each quarter from a large number of entities. There is also potentially disproportionate cost for entities handling relatively small numbers of declarations to collect and remit the new charge.

#### **Item [6] – In the appropriate position in Part 3**

This item inserts new section 13 in the Principal Regulation. New section 13 is titled “Amendments made by the *Biosecurity Charges Imposition (Customs) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024*”.

New subsection 13(1) provides that the amendment of section 9 by the Amendment Regulations applies in relation to low value goods that are the subject of a ***self-assessed clearance declaration*** given on or after 1 October 2024. This ensures that the amendments apply prospectively.



**Statement of Compatibility with Human Rights**

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

***Biosecurity Charges Imposition (Customs) 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 purpose of the *Biosecurity Charges Imposition (Customs) Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* (the Amendment Regulations) is to implement a new cost-recovery charge from 1 October 2024, to give 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 new cost-recovery charge applies to biosecurity matters in respect of low value goods brought into Australian territory that are the subject of a self-assessed clearance declaration.

The Amendment Regulations are made under the *Biosecurity 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.

**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**