

## **EXPLANATORY STATEMENT**

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

*Biosecurity Act 2015*

*Biosecurity Amendment (Time for Payment of Charge for 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.

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**

A new cost-recovery charge was imposed 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*, with effect from 1 October 2024. On commencement, the charge will extend current industry biosecurity cost recovery arrangements to low value goods that are the subject of a self-assessed clearance (SAC) declaration where the goods have been brought into Australian territory. It is intended that the charge apply only if the goods, or any of the goods, associated with the SAC declaration arrive in Australia. It 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 Biosecurity Cost Recovery Amendment Regulations) amended the Principal Regulation to facilitate the implementation of the new cost-recovery charge, identifying who is liable to pay the cost-recovery charge and when it is due and payable. Those amendments also have effect from 1 October 2024. The Biosecurity Cost Recovery Amendment

Regulations provided, relevantly, that the charge is due and payable quarterly in arrears, on or before the 30th day after the end of the relevant quarterly period.

The purpose of the *Biosecurity Amendment (Time for Payment of Charge for Low Value Goods) Regulations 2024* (the Amendment Regulations) is to provide that the charge is due and payable quarterly in arrears by reference to the issue of an invoice or other demand for payment, rather than on or before the 30th day after the end of the relevant quarterly period.

## **Background**

The Department of Agriculture, Fisheries and Forestry (the department) administers the 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 Customs Act, the Biosecurity General Act and the *Biosecurity Charges Imposition (Excise) Act 2015* (the 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 Charges Imposition (Customs) Regulation 2016* (the Biosecurity Customs Regulation) and the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity General 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**

The Amendment Regulations amend the Principal Regulation in relation to when the cost-recovery charge is due and payable.

Specifically, the effect of the Amendment Regulations is that the charge is payable quarterly in arrears by reference to the date for payment specified in an invoice or on demand for payment, rather than on or before the 30th day after the end of the relevant quarterly period.

The amendment makes no changes to the quarterly in arrears charging model however delivers greater flexibility to industry and departmental finance teams in terms of when the charge is payable.

The Office of Impact Analysis has advised that a detailed impact analysis is not required as the proposal would result in minor regulatory impact, as detailed in OIA24-07869.

## **Consultation**

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).

Industry consultation on proposed changes to the biosecurity cost-recovery charges commenced on 30 October 2023. In May 2024 industry raised implementation concerns, including about the time for payment of the quarterly charge. The amendments address the risks and concerns raised by industry that a period of 30 days after the end of the relevant quarter may be inadequate, given the need to assess data relating to self-assessed clearance declarations.

## **Details/ Operation**

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

The Amendment Regulations commence immediately after the commencement of the Biosecurity Cost Recovery Amendment Regulations 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 (Time for Payment of Charge for Low Value Goods) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the instrument is the *Biosecurity Amendment (Time for Payment of Charge for Low Value Goods) Regulations 2024* (the Amendment Regulations).

**Section 2 – Commencement**

Subsection 2(1) provides that the Amendment Regulations commence immediately after the commencement of the *Biosecurity Amendment (Extending Cost Recovery to Low Value Goods) Regulations 2024* (the Biosecurity Cost Recovery Amendment Regulations) 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.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in that column, or information in it may be edited, in any published version of the instrument.

**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] – Subsection 108(4B)**

This item repeals subsection 108(4B) of the *Biosecurity Regulation 2016* (the Principal Regulation), as amended by the Biosecurity Cost Recovery Amendment Regulations.

Subsection 108(4B) of the Principal Regulation provides that a charge in relation to a biosecurity matter prescribed by item 2A of the table in subsection 9(1) of the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Biosecurity Customs Regulation) or item 2A of the table in subsection 9(1) of the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity General Regulation) (the relevant charges) is due and payable on or before the 30th day after the end of the quarterly periods commencing on 1 January, 1 April, 1 July, and 1 October in a year.

The relevant charges are the cost-recovery charges in respect of low value goods that are the subject of a self-assessed clearance declaration where the goods have been brought into Australian territory. They are imposed under the Biosecurity Customs Regulation and the Biosecurity General Regulation as amended by 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*, respectively, with effect from 1 October 2024.

The effect of this item is to repeal subsection 108(4B) of the Principal Regulation, as amended by the Biosecurity Cost Recovery Amendment Regulations. In its place subsection 108(5) of the Principal Regulation, read with subsection 108(6) as inserted by the Amendment Regulations, makes provision for when a relevant charge is due and payable.

#### **Item [2] – Subsection 108(5)**

This item omits the words “A charge” and substitutes the words “Subject to subsection (6), a charge” in subsection 108(5) of the Principal Regulation.

Subsection 108(5) of the Principal Regulation provides that, relevantly, a charge imposed by the Biosecurity Customs Regulation or the Biosecurity General Regulation is due and payable:

- (a) if the Agriculture Department issues an invoice in relation to the charge that specifies the last day for payment of the charge – by close of business on that day; or
- (b) in any other case – when a demand for payment of the charge is made.

This item provides for a qualification at the beginning of the subsection, referring to subsection 108(6), which is inserted by this Schedule. Subsection 108(6) makes specific arrangements in relation to the timing for issuing an invoice or demanding payment in relation to charges for low value goods that are the subject of a self-assessed clearance declaration, to make clear that the charges are payable quarterly in arrears.

The effect of this item is that an invoice cannot be issued or payment demanded in relation to a relevant charge for low value goods until after the end of each quarterly period in which the

self-assessed clearance declaration for those low value goods was given, as provided for in new subsection 108(6) inserted by this Schedule.

### **Item [3] – Subsection 108(5)**

This item omits the reference to subsection 108(4B) of the Principal Regulation.

Subsection 108(4B) of the Principal Regulation, as amended by the Biosecurity Cost Recovery Amendment Regulations, provides that a relevant charge is due and payable on or before the 30th day after the end of the quarterly periods commencing on 1 January, 1 April, 1 July, and 1 October in a year.

Subsection 108(4B) of the Principal Regulation is repealed by item 1 of Schedule 1 to the Amendment Regulations. Having been repealed, it is no longer necessary to refer to it.

### **Item [4] – At the end of section 108**

This item adds at the end of section 108 of the Principal Regulation a new subsection 108(6).

The item makes provision for when a relevant charge is due and payable.

New subsection 108(6) imposes additional requirements in relation to the timing for payment of an invoice referred to in paragraph 108(5)(a) of the Principal Regulation or a demand for payment referred to in paragraph 108(5)(b) of the Principal Regulation, where the invoice or demand relates to a charge for low value goods that are the subject of a self-assessed clearance declaration.

Subsection 108(5) of the Principal Regulation provides that, relevantly, a charge imposed by the Biosecurity Customs Regulation or the Biosecurity General Regulation is due and payable:

- (a) if the Agriculture Department issues an invoice in relation to the charge that specifies the last day for payment of the charge – by close of business on that day; or
- (b) in any other case – when a demand for payment of the charge is made.

This item provides that, in relation to a relevant charge, an invoice must not be issued, and a demand must not be made, until after the end of the period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in which the self-assessed clearance declaration was given.

The effect of this item is that a relevant charge is due and payable quarterly in arrears by reference to either the issue of an invoice or when a demand for payment is made.

Where an invoice is issued it will refer to self-assessed clearance declarations given in a quarter beginning on 1 January, 1 April, 1 July or 1 October. The relevant charge will be due and payable by close of business on the day specified in the invoice as the last day for payment. For example, an invoice issued on 1 April requiring payment by 30 April would refer to the charges incurred between 1 January and 31 March in the same year, and would be due and payable by close of business on 30 April.

Where a demand is made, it will likewise refer to self-assessed clearance declarations given in a quarter beginning on 1 January, 1 April, 1 July or 1 October. The relevant charge will be due and payable by when the demand is made.

This item preserves the effect of subsection 108(4B) of the Principal Regulation, repealed by this Schedule, insofar as it provided that a charge for low value goods is payable quarterly in arrears.

## Statement of Compatibility with Human Rights

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

### ***Biosecurity Amendment (Time for Payment of Charge for 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 (Time for Payment of Charge for Low Value Goods) Regulations 2024* (the Amendment Regulations) amend the *Biosecurity Regulation 2016* to change the time of payment of a cost-recovery charge for low value goods brought into Australian territory that are the subject of a self-assessed clearance declaration.

From 1 October 2024 a new cost-recovery charge will come into effect, 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 cost-recovery charge by identifying 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.

**The Hon Julie Collins MP**  
**Minister for Agriculture, Fisheries and Forestry**