



Primary Industries (Customs) Charges Act 2024

No. 55, 2024

**An Act relating to the imposition of primary
industries charges that are duties of customs, and
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act relating to the imposition of primary
industries charges that are duties of customs, and
for related purposes**

[Assented to 9 July 2024]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act is the *Primary Industries (Customs) Charges Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 January 2025.	1 January 2025

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act authorises the regulations to:

- (a) impose charges in relation to animal products, plant products, fungus products or algal products that are produce of a primary industry; and
- (b) impose charges in relation to goods that are of a kind consumed by, or used in the maintenance or treatment of, animals, plants, fungi or algae.

In addition to imposing a particular charge, the regulations are to set out:

- (a) any exemptions from the charge; and
- (b) the rate of the charge; and
- (c) the person who is liable to pay the charge (the charge payer).

4 Definitions

In this Act:

algae means macroalgae, microalgae or cyanobacteria, and includes seaweeds.

algal product means:

- (a) an alga; or
- (b) any part of an alga; or
- (c) anything produced by an alga; or
- (d) anything wholly or principally produced from, or wholly or principally derived from, an alga.

animal means any member, alive or dead, of the animal kingdom (other than a human being).

animal product means:

- (a) an animal; or
- (b) any part of an animal; or
- (c) anything produced by an animal; or
- (d) anything wholly or principally produced from, or wholly or principally derived from, an animal.

aquaculture means propagating, rearing, keeping or breeding aquatic vertebrates or aquatic invertebrates.

charge means a charge imposed by regulations made for the purposes of Part 2 or 3.

fishing means the catching, capturing or harvesting of aquatic vertebrates or aquatic invertebrates.

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forest operations means the growing, harvesting or processing of wood.

fungus means any member, alive or dead, of the fungi kingdom, and includes yeasts, mushrooms and truffles.

fungus product means:

- (a) a fungus; or
- (b) any part of a fungus; or
- (c) anything produced by a fungus; or
- (d) anything wholly or principally produced from, or wholly or principally derived from, a fungus.

nominated industry representative body means a body determined to be a nominated industry representative body by an instrument in force under subsection 20(1).

nominated polling body means a body determined to be a nominated polling body by an instrument in force under subsection 20(6).

plant means any member, alive or dead, of the plant kingdom.

plant product means:

- (a) a plant; or
- (b) any part of a plant; or
- (c) anything produced by a plant; or
- (d) anything wholly or principally produced from, or wholly or principally derived from, a plant.

produce of a primary industry means products that result from any of the following:

- (a) agriculture or the cultivation of land;
- (b) the maintenance of animals for commercial purposes;
- (c) soilless growing systems, including hydroponics, aeroponics and aquaponics;
- (d) controlled environment cropping, including vertical farming, indoor farming and protected cropping;
- (e) forest operations;

- (f) fishing;
- (g) aquaculture;
- (h) hunting or trapping;
- (i) picking or harvesting from the wild;
- (j) horticulture;
- (k) viticulture;
- (l) the cultivation of fungi or algae;
- (m) any other primary industry activity.

product means an animal product, a plant product, a fungus product or an algal product (whether or not any operations have been performed in relation to the product).

property of any kind belonging to a State: see subsection 18(2).

Secretary means the Secretary of the Department.

5 Crown to be bound

This Act binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory. However, it does not bind the Crown in right of the Commonwealth.

6 Application of this Act in external Territories

- (1) Subject to subsection (2), this Act and the regulations do not extend to the external Territories.
- (2) The regulations may extend this Act, and any provisions of the regulations, to an external Territory that is prescribed by the regulations.
- (3) Each charge does not apply to products or goods exported to an external Territory.

Section 7

Part 2—Charges in relation to products that are produce of a primary industry

7 Imposition of charges

- (1) The regulations may impose a charge in relation to one or more specified products in the circumstances prescribed by the regulations.

Note: Products may be specified by name, by inclusion in a specified class, or in any other way.

- (2) The products must be produce of a primary industry.

Minister to be satisfied of matters

- (3) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the imposition of the charge will result in one or more of the following:
- (a) expenditure on the marketing, advertising or promotion of products of one or more primary industries;
 - (b) expenditure on research and development activities for the benefit of one or more primary industries;
 - (c) expenditure on activities, including biosecurity activities, relating to the promotion or maintenance of the health of plants, animals, fungi or algae;
 - (d) expenditure on matters relating to a biosecurity response;
 - (e) expenditure on activities relating to the National Residue Survey;
 - (f) expenditure:
 - (i) on any other activity prescribed by the regulations in relation to one or more primary industries; and
 - (ii) for the benefit of one or more primary industries.

Duty of customs

- (4) This section authorises the imposition of a charge only so far as the charge is a duty of customs within the meaning of section 55 of the Constitution.

8 Imposition of 2 or more charges

This Part does not prevent the imposition of 2 or more charges, whether in relation to the same products or in relation to different products.

9 Exemptions from charge

The regulations may provide for exemptions from a charge under this Part.

Section 10

Part 3—Charges in relation to goods consumed by, or used in the maintenance or treatment of, animals, plants, fungi or algae

10 Imposition of charges

- (1) The regulations may impose a charge in relation to one or more specified goods:
 - (a) that are of a kind consumed by, or used in the maintenance or treatment of, animals, plants, fungi or algae; and
 - (b) in the circumstances prescribed by the regulations.

Note: Goods may be specified by name, by inclusion in a specified class, or in any other way.

Minister to be satisfied of matters

- (2) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the imposition of the charge will result in either or both of the following:
 - (a) expenditure on activities, including biosecurity activities, relating to the promotion or maintenance of the health of plants, animals, fungi or algae;
 - (b) expenditure on matters relating to a biosecurity response.

Duty of customs

- (3) This section authorises the imposition of a charge only so far as the charge is a duty of customs within the meaning of section 55 of the Constitution.

11 Imposition of 2 or more charges

This Part does not prevent the imposition of 2 or more charges, whether in relation to the same goods or in relation to different goods.

12 Exemptions from charge

The regulations may provide for exemptions from a charge under this Part.

Part 4—Rate of charge

13 Rate of charge

The rate of a charge is worked out in accordance with the regulations.

14 Components of charge

- (1) The rate of a charge may be expressed to be equal to:
 - (a) a single component prescribed by the regulations; or
 - (b) the sum of such components as are prescribed by the regulations.
- (2) Subsection (1) does not limit section 13.

15 Flexibility in relation to rates of charge

- (1) Different rates of the same charge may be prescribed by the regulations for different kinds of products or goods.
- (2) Subsection (1) does not limit section 13.
- (3) Subsection (1) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

16 Nil or zero rates

The rate of a charge, or a component of the rate of a charge, may be expressed to be:

- (a) nil; or
- (b) zero; or
- (c) \$0 or 0 cents per unit of measure; or
- (d) 0% of the sale price of a product or goods.

Part 5—Charge payer

17 Charge payer

A charge is payable by the person worked out in accordance with the regulations.

Part 6—Other matters

18 Act does not impose charge on property of a State

- (1) This Act does not authorise the imposition of a tax on property of any kind belonging to a State.
- (2) *Property of any kind belonging to a State* has the same meaning as in section 114 of the Constitution.
- (3) For the purposes of this section, assume that a reference in section 114 of the Constitution to a State includes a reference to the Australian Capital Territory and the Northern Territory.

19 Net GST not included in price of product or goods or amount paid for product or goods

Despite section 177-12 of the *A New Tax System (Goods and Services Tax) Act 1999*, a reference in the regulations to the price of a product or goods (including sale price or market price), or the amount paid for a product or goods, is taken not to include the net GST (within the meaning of that Act) that is included in that price or amount.

20 Nominated industry representative bodies and nominated polling bodies

Nominated industry representative bodies

- (1) The Minister may, by legislative instrument:
 - (a) determine a specified body to be a nominated industry representative body; and
 - (b) specify one or more charges in relation to that body.
- (2) If the Minister does so, before regulations are made setting or amending the rate of such a charge:
 - (a) if the whole of the rate is specified in relation to the body in accordance with paragraph (3)(a)—the body must be

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- consulted, and may make recommendations to the Minister, about the whole of the rate; or
- (b) if a part or parts of the rate are specified in relation to the body in accordance with paragraph (3)(b)—the body must be consulted, and may make recommendations to the Minister, about that part or parts of the rate.
- (3) The Minister may, in the instrument under subsection (1):
- (a) specify the whole of the rate of a charge in relation to a body for the purposes of paragraph (2)(a); or
- (b) specify a part or parts of the rate of a charge in relation to a body for the purposes of paragraph (2)(b).
- (4) A nominated industry representative body must, before making a recommendation referred to in paragraph (2)(a) or (b), consult the bodies (if any) specified in relation to the body under subsection (5).
- (5) The Minister may, in the instrument under subsection (1), specify bodies in relation to a nominated industry representative body for the purposes of subsection (4).

Nominated polling bodies

- (6) The Minister may, by legislative instrument:
- (a) determine a specified body to be a nominated polling body; and
- (b) specify one or more charges in relation to that body.
- (7) If the Minister does so, before regulations are made setting or amending the rate of such a charge:
- (a) if the whole of the rate is specified in relation to the body in accordance with paragraph (8)(a)—the body must be consulted, and may make recommendations to the Minister, about the whole of the rate; or
- (b) if a part or parts of the rate are specified in relation to the body in accordance with paragraph (8)(b)—the body must be consulted, and may make recommendations to the Minister, about that part or parts of the rate.

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- (8) The Minister may, in the instrument under subsection (6):
 - (a) specify the whole of the rate of a charge in relation to a body for the purposes of paragraph (7)(a); or
 - (b) specify a part or parts of the rate of a charge in relation to a body for the purposes of paragraph (7)(b).
- (9) A nominated polling body must, before making a recommendation referred to in paragraph (7)(a) or (b), ensure a poll is conducted in accordance with the requirements specified under subsection (10). The recommendation must be in accordance with the results of the poll.
- (10) The Minister may, in the instrument under subsection (6), specify requirements that are for, or in relation to, the conduct of a poll for the purposes of subsection (9).

21 Treatment of partnerships

- (1) This Act and the regulations apply to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act or the regulations is imposed on each partner instead, but may be discharged by any of the partners.
- (3) If this Act or the regulations would otherwise permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (4) For the purposes of this Act and the regulations, a change in the composition of a partnership does not affect the continuity of the partnership.

22 Treatment of trusts

- (1) This Act and the regulations apply to a trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

- (2) If the trust has a single trustee:

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- (a) an obligation that would otherwise be imposed on the trust by this Act or the regulations is imposed on the trustee instead; and
- (b) if this Act or the regulations would otherwise permit something to be done by the trust, the thing may be done by the trustee.

Trusts with multiple trustees

- (3) If the trust has 2 or more trustees:
 - (a) an obligation that would otherwise be imposed on the trust by this Act or the regulations is imposed on each trustee instead, but may be discharged by any of the trustees; and
 - (b) if this Act or the regulations would otherwise permit something to be done by the trust, the thing may be done by one or more of the trustees on behalf of the trust.

23 Treatment of unincorporated bodies or associations

- (1) This Act and the regulations apply to an unincorporated body or association as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the body or association by this Act or the regulations is imposed on each member of the body's or association's committee of management instead, but may be discharged by any of the members.
- (3) If this Act or the regulations would otherwise permit something to be done by the body or association, the thing may be done by one or more of the members of the body's or association's committee of management on behalf of the body or association.

24 Making of regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the regulations; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 24

Consultation—setting or amending the rate of a charge

- (2) Before regulations are made setting or amending the rate of a charge, the Minister must be satisfied that in relation to the proposed regulations:
- (a) if one or more nominated industry representative bodies must be consulted about the proposed regulations in accordance with section 20:
 - (i) the consultation has occurred; and
 - (ii) if, in accordance with that section, such a body makes a recommendation to the Minister about the rate—the rate does not exceed the rate so recommended; and
 - (b) if a nominated polling body must be consulted about the proposed regulations in accordance with section 20:
 - (i) the consultation has occurred; and
 - (ii) if, in accordance with that section, the body makes a recommendation to the Minister about the rate—the rate does not exceed the rate so recommended; and
 - (c) if neither a nominated industry representative body nor a nominated polling body must be consulted about the proposed regulations:
 - (i) appropriate consultation has been undertaken about the proposed regulations with bodies and persons involved in the industry in relation to the charge; and
 - (ii) any recommendations made by those bodies or persons about the rate have been considered.

Note: For consultation requirements generally, see section 17 (consultation) of the *Legislation Act 2003*.

- (3) The fact that consultation referred to in subsection (2) does not occur does not affect the validity or enforceability of the regulations.

Other instruments

- (4) The regulations may make provision in relation to a matter by conferring on the Minister or the Secretary a power to make a legislative instrument.

Section 24

Incorporation of other instruments

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, the regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

No limit on subsection (1)

- (6) Subsections (4) and (5) do not limit subsection (1).

[Minister's second reading speech made in—
House of Representatives on 18 October 2023
Senate on 16 November 2023]

(123/23)
