

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 196, 2015**

Issued by Authority of the Minister for Agriculture and Water Resources

*Quarantine Charges (Imposition—General) Act 2014*

*Quarantine Charges (Imposition—General) Regulation 2015*

#### **Legislative Authority**

Section 12 of the *Quarantine Charges (Imposition—General) Act 2014* (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.

Subsections 7(1) and 7(4) of the Act provide that a regulation may prescribe a charge in relation to a prescribed matter connected with the administration of the *Quarantine Act 1908* (Quarantine Act), but only so far as that charge is neither a duty of customs or excise within the meaning of section 55 of the Constitution. Subsections 7(2) and 7(3) of the Act also provide that the charges prescribed under subsection 7(1) are imposed as taxes and that two or more charges may be prescribed in relation to the same matter, and a single charge may be prescribed in relation to 2 or more matters.

Subsection 8(1) of the Act provides that a regulation may prescribe a charge under subsection 7(1) by specifying an amount of a charge or the method for calculating the amount of a charge. Before the Governor-General may make a regulation under subsection 7(1) the Act requires that the Minister for Agriculture and Water Resources 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 a regulation may prescribe one or more persons who are liable to pay a specified charge under subsection 7(1). Section 10 of the Act provides that a regulation may be made to exempt a person from a charge prescribed under subsection 7(1).

#### **Purpose**

The purpose of the *Quarantine Charges (Imposition—General) Regulation 2015* (the Regulation) is to prescribe new charges in relation to various prescribed matters connected with the administration of the Quarantine Act, and which are not considered a duty of customs or excise within the meaning of section 55 of the Constitution. The Regulation also

prescribes who is liable to pay a specified charge, the persons or classes of persons that are exempt from a charge and makes transitional provisions for any such charges.

The Regulation gives effect to the new quarantine cost recovery charges developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

## **Background**

Shifting global demands, growing passenger and trade volumes, increasing imports from a growing number of countries and population expansion all contribute to the complexity of managing quarantine risk.

Quarantine services undertaken by the department includes assessing and managing the quarantine risks arising from people, goods and vessels (sea and aircraft) entering Australia. These essential services which occur onshore, offshore and at the border are a major part of the department's day-to-day business.

Monitoring compliance with quarantine legislation comes at a cost. The *Australian Government Cost Recovery Guidelines* state that agencies should recover some or all of the costs of activities that they provide.

The policy authority for continued cost recovery of quarantine services was confirmed in the 2015–16 Budget when the Commonwealth announced the redesign of the department's cost recovery arrangements. The redesign improves the department's cost recovery arrangements so they are financially sustainable and support the efficient and effective delivery of quarantine services into the future. The redesign improves the cost recovery of quarantine services by:

- recovering the full costs of services undertaken by the department
- simplifying the structure of fees and charges
- achieving greater equity in client contributions to system costs
- expanding and enhancing services to strengthen the management of quarantine risk.

The Act, along with the *Quarantine Charges (Collection) Act 2014*, the *Quarantine Charges (Imposition—Customs) Act 2014* and the *Quarantine Charges (Imposition—Excise) Act 2014*, which commenced on 1 July 2014, provides the appropriate legal framework for the recovery of the Commonwealth's costs through the imposition and collection of charges, rather than fees. The *Quarantine Service Fees Determination 2005*, which establishes quarantine fees payable, will operate alongside this legislative framework.

## Impact and Effect

The Regulation will allow the Commonwealth to appropriately recover the costs for providing quarantine services by imposing charges which are not considered duties of customs or duties of excise within the meaning of section 55 of the Constitution. The Regulation will improve and implement part of the department's redesigned cost recovery arrangement for quarantine services, including through:

- the recovery of costs through the imposition of charges, as cost recovery levies
- reducing the number of charges that may apply to imported goods
- standardisation of charges for like services such as an application for approval and annual registration of quarantine approved premises and compliance agreements.

## Consultation

The department consulted with stakeholders during the development of the redesigned cost recovery fees and charges. This included the department working with all quarantine-related industry consultative committees and other clients and interested stakeholders through public engagement forums. The department released a draft Cost Recovery Implementation Statement (CRIS) for public comment and provided opportunity for stakeholders to provide feedback through a submissions process.

Stakeholder feedback was taken into account and the final CRIS was certified by the Secretary of the department and endorsed by the Minister for Agriculture and Water Resources. The Minister for Finance agreed to release the final CRIS which is available on the department's website.

The Regulation is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment A.

A Regulatory Impact Statement (RIS) was completed on the department's quarantine, imported food and export certification cost recovery redesign (Office of Best Practice Regulation ID: 17726). OBPR assessed the RIS as best practice. A copy of the RIS is attached.

The Regulation is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

## **Details of the *Quarantine Charges (Imposition—General) Regulation 2015***

### **Section 1 – Name**

This section provides that the name of the Regulation is the *Quarantine Charges (Imposition—General) Regulation 2015*.

### **Section 2 – Commencement**

This section provides for the Regulation to commence on 1 December 2015.

### **Section 3 – Authority**

This section provides for the Regulation to be made under the *Quarantine Charges (Imposition—General) Act 2014*.

### **Section 4 – Simplified outline of this instrument**

This section sets out a simplified outline of the Regulation which states that the Regulation prescribes charges in relation to certain matters connected with the administration of the Quarantine Act; the persons liable to pay and exemptions from charges.

It also notes that the prescribed charges are imposed under the Act as taxes. Section 55 of the Constitution relevantly requires that laws imposing duties of customs deal with duties of customs only, and laws imposing duties of excise deal with duties of excise only. Section 55 also has the effect that laws imposing ‘general’ taxation (that is, taxes that are neither customs or excise duties) may not impose duties of customs or excise.

The third paragraph of the simplified outline in this section notes that this Regulation prescribes a charge only so far as it is not a duty of customs or a duty of excise within the meaning of section 55 of the Constitution. It also notes that to the extent a charge is a duty of customs, it is prescribed under *the Quarantine Charges (Imposition—Customs) Regulation 2014* (it is unlikely the charges are duties of excise).

The charges listed in this Regulation are also listed in the *Quarantine Charges (Imposition—Customs) Regulation 2014*. This ensures that a charge is validly imposed under the relevant Act even where it is unclear whether it is a duty of customs or a ‘general’ tax (i.e. neither a duty of customs nor a duty of excise).

## Section 5 – Definitions

This section provides definitions of the terms *Act*, *Christmas Island*, *Cocos (Keeling) Islands*, *consignee*, *consignment*, *Director of Quarantine*, *disability assistance dog*, *full import declaration*, *goods*, *husbandry services*, *Integrated Cargo System*, *overseas vessel*, *quarantine activities*, *quarantine matter*, *quarantine station* and *vessel* which are used in this Regulation. The purpose of providing these definitions is to ensure the meaning of these terms is clear. Subsection 5(2) clarifies what a consignment will be for the purposes of the Regulation. Subsection 5(3) clarifies that a consignment may include a single animal or egg.

## **Part 2 – Charges**

### Section 6 – Charges for quarantine matters

Section 6 sets out the charges that will apply to the relevant quarantine matters prescribed in this section. These include charges:

- for risk profiling, surveillance, monitoring compliance and administration of other quarantine matters in relation to goods covered by a full import declaration that are brought into Australia by air or sea (items 1 and 2);
- in relation to an application for a permit provided for by section 13 of the Quarantine Act and the *Quarantine Proclamation 1998* (item 3);
- for the administration and management of quarantine activities in relation to an animal or plant in quarantine, and in respect of which the amount to be charged depends on the particular animal or plant (items 4,5,6 and 11);
- for the reservation of a place in a quarantine station for either a consignment of live birds or birds eggs for hatching and administration and management of quarantine activities in relation to such a consignment (items 7 and 9);
- for confirmation of a place in a quarantine station for either a consignment of live birds or birds eggs for hatching and administration and management of quarantine activities in relation to those consignments (items 8 and 10);
- in relation to an application for approval of a place under section 46A of the Quarantine Act (a quarantine approved premises) or an application to enter into a compliance agreement under section 66B of the Quarantine Act (items 12 and 14);
- for the development and management of arrangements for the performance of quarantine activities by a person on behalf of the Commonwealth at a quarantine approved premise or otherwise in accordance with a compliance agreement (items 13 and 15);
- in relation to an overseas vessel (other than an aircraft) that arrives at a place in Australia for risk profiling, surveillance, monitoring compliance and administration of other quarantine matters (and which applies for each overseas vessel according to its size in length) (item 16).

The amount of the charges prescribed in this section are set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the matter. The note to this section makes clear that a person may be exempt from liability to pay the charge prescribed by item 12, 13, 14 or 15 of the above table in accordance with section 8.

#### Section 7 - Person liable to pay a charge

Section 7 specifies the person(s) who will be liable to pay each of the charges prescribed in section 6 of the Regulation. Depending on the charge and the relevant quarantine matter to which it relates, the person who is liable to pay a charge may include the owner of goods, the person making an application, the person with whom the department has entered into an agreement, the person who holds an approval, and/or the operator of a vessel.

It is necessary to prescribe the person who is liable to pay each of the charges prescribed in section 6 to ensure the relevant charge is attributed appropriately and costs associated with the relevant activities provided can be recovered.

#### Section 8 – Exemptions from charges

Paragraphs 1(a) – (d) mirror exemptions in the *Quarantine Charges (Imposition—Customs) Regulation 2014*.

Paragraph 8(1)(e) means a charge prescribed by section 6 is not payable by a person if the quarantine matter relates to the importation of a disability assistance dog brought into Australia, Christmas Island and Cocos (Keeling) Islands.

Paragraph 8(1)(f) means a charge prescribed by section 6 is not payable by a person if the quarantine matter relates to the examination of personal luggage that is brought into Australia, Christmas Island and Cocos (Keeling) Islands on the same vessel as the owner or importer of the luggage.

Paragraph 8(1)(g) means a charge prescribed by section 6 is not payable by a person if the quarantine matter relates to the screening or inspection of international postal items that arrive in Australia, Christmas Island and Cocos (Keeling) Islands.

Paragraphs 8(1)(h) and 8(1)(i) exempt quarantine matters that relate to goods or any other things that have been, or that are to be, imported or brought into Christmas Island and Cocos (Keeling) Islands, or quarantine activities performed in these places.

Subsection 8(2) provides that a person is not liable to pay the application charges prescribed by items 12 or 14 of the table in section 6 in relation to an application referred to in that item if the person is already the holder of an approval for a quarantine approved premises or is a party to a compliance agreement in force under either the Quarantine Act or the *Imported Food Control Act 1992*.

Subsection 8(3) provides that a person is not liable to pay the charge prescribed by item 13 of the table in section 6 for a financial year, or a part of a financial year in relation to a quarantine approved premise if:

- the person has already paid the charge for that financial year or part of a financial year, in relation to another quarantine approved premises (either under this Regulation or the *Quarantine Charges (Imposition—Customs) Regulation 2014*);
- the person has paid the charge prescribed by item 15 of the table in section 6 for that financial year or that part of the financial year, in relation to another compliance agreement (either under this Regulation or the *Quarantine Charges (Imposition—Customs) Regulation 2014*);
- The person has paid the charge prescribed by item 2 of the table in section 6 of the *Imported Food Charges (Imposition—Customs) Regulation 2015* and the *Imported Food Charges (Imposition—General) Regulation 2015*.

Subsection 8(4) has a similar effect as subsection (3), but relates to when a person is not liable to pay the annual charge in relation to a compliance agreement.

The exemptions in subsections 8(2), 8(3) and 8(4) are in recognition that the cost to the department to develop and manage the approval of quarantine premises and compliance agreements is at the entity level rather than in relation to each approval or agreement. In circumstances where a person has already entered into an agreement or is an approval holder, the department does not incur the same development and management costs when considering subsequent applications, giving of approvals or entering into an agreement as it did on the first occasion.

### **Part 3 – Application and transitional provisions**

#### **Section 9 – Definitions**

Section 9 provides clarification on the meaning of terms and references used in Part 3. It defines the *Quarantine Service Fees Determination* to mean the *Quarantine Service Fees Determination 2005*, as in force immediately before 1 December 2015. It also makes clear that a reference to a previous item is a reference to an item of a table in Schedule 1 in that Determination. It further provides that a reference to a new item is a reference to an item in section 6 of this Regulation in force on or after 1 December 2015.

#### **Section 10 – Goods covered by a full import declaration**

Section 10 makes clear when the charges prescribed at items 1 and 2 of the table in section 6 will apply. That is, in relation to goods covered by a full import declaration, when that declaration is made on or after 1 December 2015.

### Section 11 – Application for permits

Section 11 makes it clear that the charge prescribed in item 3 of the table in section 6 in relation to an application for a permit applies to an application for a permit that is made on or after 1 December 2015.

### Section 12 – Animals and eggs that enter a quarantine station on or after 1 December 2015

Section 12 qualifies when the charges relating to items 4 to 10 of the table in section 6 will apply. Subject to the exceptions as set out in subsections 12(3), 12(4) and 12(5), these charges will apply on and after 1 December 2015.

Subsections 12(2), 12(6) and 12 (7) provide that where a booking fee and, if applicable a deposit, have been paid before 1 December 2015, those payments will be taken as payments in relation to the charges that apply from 1 December 2015.

Subsections 12(3), 12(4) and 12 (5) provide where specified fees have been paid before 1 December 2015 for an animal (including consignments of bees, but other than live birds), the charges in items 4, 5 and 6 of table 6 that would otherwise apply, are not payable.

The effect of this section is that for the transitional period, payments made under the *Quarantine Fees Determination 2005* prior to 1 December 2015 are taken as a payment toward, or in place of a payment of a charge in force on or after 1 December 2015.

### Section 13 – Plants

Section 13 makes clear that the charge prescribed by item 11 of the table in section 6 will apply in relation to a plant or plants that are in a quarantine station during a month, or part of a month, beginning on or after 1 December 2015.

### Section 14 – Approval of premises

Section 14 clarifies when the charge prescribed in respect of an application for approval and the charge to obtain an approval or renewal an approval for a quarantine approved premises will apply.

Under subsection 14(1) the charge specified in item 12 of the table in section 6 in relation to quarantine approved premises will apply from 1 December 2015. Subsection 14(2) specifies that a person is taken to have paid the charge for the financial year ending 30 June 2016 if the person was liable to pay the applicable fee payable under the *Quarantine Services Fees Determination 2005* and did so prior to 1 December 2015.

Subsection 14(3) applies the charge of \$1450 (item 13 of the table in section 6) to an approval or renewal of an approval given on or after 1 December 2015 and before 1 January 2016.



This provision reduces the liability of a person who obtains an approval in this period from \$2 900 to \$1 450 within the period mentioned.

#### Section 15 – Compliance agreements

Section 15 clarifies when the charge prescribed in respect of an application for a compliance agreement and the charge to obtain an approval or renewal an approval for a compliance agreement will apply.

Under subsection 15(1) the charge specified in item 14 of the table in section 6 in relation to a compliance agreement will apply from 1 December 2015.

Subsection 15(2) applies the charge of \$1450 (item 15 of the table in section 6) to a compliance agreement in force or entered into on or after 1 December 2015 and before 1 January 2016. This provision reduces the liability of a person who obtains an approval in this period from \$2 900 to \$1 450 within the period mentioned.

#### Section 16 – Entry of vessels into Australia

Section 16 makes clear that the charge in relation to an overseas vessel (other than an aircraft) that arrives at a place in Australia for risk profiling, surveillance, monitoring compliance and administration of other quarantine matters (and which applies for each overseas vessel according to its size in length) is to apply to an overseas vessel that arrives in Australia on and after 1 December 2015.

#### Section 17 – Repeal of this Part

Section 17 will repeal Part 3 of in its entirety on 1 July 2016. Part 3 is intended to be ineffective from this date.

## **Statement of Compatibility with Human Rights**

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

### ***Quarantine Charges (Imposition—General) Regulation 2015***

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 *Quarantine Charges (Imposition—General) Regulation 2015* (the Regulation) is to prescribe new charges in relation to various prescribed matters connected with the administration of the *Quarantine Act 1908*, and which are not considered a duty of customs or excise within the meaning of section 55 of the Constitution. The Regulation also prescribes who is liable to pay a specified charge, the persons or classes of persons that are exempt from a charge and makes transitional provisions for any such charges.

The Regulation gives effect to the new quarantine cost recovery charges developed as part of the Department of Agriculture and Water Resources' redesign of cost recovery arrangements.

### **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. Barnaby Joyce MP**  
**Minister for Agriculture and Water Resources**