

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

Export Charges (Imposition—Customs) Act 2015

Export Charges (Imposition—Customs) Amendment (Tariff Rate Quotas) Regulation 2016

Legislative Authority

Section 15 of the *Export Charges (Imposition—Customs) Act 2015* (the Act) provides that the Governor General may make regulations prescribing matters required or permitted by this Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Purpose

The *Export Charges (Imposition—Customs) Regulation 2015* (the Regulation) prescribes charges in relation to the export of regulated goods or regulated matters relating to the export of regulated goods, to the extent they are a duty of customs within the meaning of section 55 of the Constitution. The Regulation was developed to give effect to the new export cost recovery charges developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

The purpose of the *Export Charges (Imposition—Customs) Amendment (Tariff Rate Quotas) Regulation 2016* (the Amendment Regulation) is to amend the Regulation to prescribe additional charges for the issue of tariff rate quota certificates to be granted under orders made under the recently enacted section 23A of the *Export Control Act 1982*.

Background

Where export tariff rate quotas are established by trade agreements Australia seeks to manage the quotas in order to offer exporters the maximum concessions possible on agricultural products. For example, eight new quotas introduced under the Japan-Australia Economic Partnership Agreement saved exporters approximately \$3 million in tariffs in the period January to May 2015.

Australia administers quotas in a way that:

- minimises market distortion from quota administration
- minimises regulatory intervention and barriers to exporting
- optimises the commercial value and use of the quota
- ensures consistent, transparent and efficient administration
- considers commercial arrangements, and
- rewards market development.

The Export Control Amendment (Quotas) Act 2015 (the Quotas Act), which received royal assent on 11 December 2015, enables the Secretary to make orders providing for, or in

relation to, the establishment and administration of a system, or systems, of tariff rate quotas for the export of goods. Orders may be made to cover goods currently subject to quota regulation but could cover any other goods that quotas may apply to in the future. The Quotas Act complements the government's strategic approach for capturing premium markets outlined in the Agricultural Competitiveness White Paper and builds on the gains from recent free trade agreements with our major trading partners. The Quotas Act was passed after the Regulation was made. The Amendment Regulation includes new charges which will apply to the future issue of tariff rate quota certificates under orders to be made under the new section 23A of the *Export Control Act 1982*.

The Regulation, as amended by the Amendment Regulation, will operate alongside the legislative framework for cost recovery through fees where a service is provided directly to an individual or business or organisation. These fees are contained within the *Export Control (Fees) Orders 2015* (which will also be amended to deal with the new quota arrangements).

Impact and Effect

The Amendment Regulation will allow the Commonwealth to appropriately recover the costs for issuing tariff rate quota certificates by imposing charges to the extent they are a duty of customs within the meaning of section 55 of the Constitution.

The impact and effect of the cost recovery changes were considered as part of the cost recovery review conducted in 2015.

Consultation

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

Stakeholder feedback was taken into account and the final CRISs were 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 CRISs which are available on the department's website.

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 (OBPR) ID: 17726). OBPR assessed the RIS as best practice. A copy of the RIS is attached. For the subsequent changes included in this Amendment Regulation the department consulted with the OBPR and it was determined a RIS was not required, OBPR ID: 20350.

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.

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

Details of the *Export Charges (Imposition-Customs) Amendment (Tariff Rate Quotas) Regulation 2016*

Section 1 – Name

This section provides that the name of the Regulation is the *Export Charges (Imposition—Customs) Amendment (Tariff Rate Quotas) Regulation 2016*.

Section 2 – Commencement

This section provides for the Regulation to commence the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Export Charges (Imposition—Customs) Act 2015*.

Section 4 – Schedules

This section provides that each schedule is amended as set out in this instrument.

Schedule 1 – Amendments

Item 1 Section 5 (Definition of *Export Control Order*)

This item repeals the definition of an Export Control Order and substitutes it with a new definitions which includes terminology that will allow for a legislative instrument made under the *Export Control Act 1982*, as well as under regulations, to be an Export Control Order.

Item 2 Section 5 (Paragraph (a) of the definition of *export document*)

This item expands the definition of an export document to include a ‘tariff rate quota certificate’.

Item 3 Section 5

This item provides for a definition for what a tariff rate quota certificate is.

Item 4 At the end of subsection 10(2)

This item provides for goods in relation to which a tariff rate quota certificate has been issued to be included as a regulated goods, for the purposes of subsection 11 (1) of the Act.

Item 5 Section 21 (table item 7, column 1)

This item amends the relevant item of the table so that it provides for the charges for the issue of export documents for goods in relation to which a government certificate has been issued under section 8.05 of the *Export Control (Prescribed Goods- General) Order 2005*, with the exception of tariff rate quota certificates.

Item 6 Section 21 (at the end of the table)

This item provides for a charge to apply to the electronic issue of a tariff rate quota certificate for any product not covered by existing items 3 or 4 in the table. As a general rule, it would apply to non-prescribed good tariff rate quota certificates as both meat and dairy products are already accounted for under table items 3 and 4.

Item 7 At the end of section 21

This item provides for the explanation via a note, that tariff rate quota certificate charges for meat and milk products are already accounted for in the table.

Statement of Compatibility with Human Rights

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

Export Charges (Imposition—Customs) Amendment (Tariff Rate Quotas) Regulation 2016

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 *Export Charges (Imposition—Customs) Regulation 2015* (the Regulation) prescribes charges in relation to the export of regulated goods or regulated matters relating to the export of regulated goods, to the extent they are a duty of customs within the meaning of section 55 of the Constitution. The Regulation was developed to give effect to the new export cost recovery charges developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

The purpose of the *Export Charges (Imposition—Customs) Amendment (Tariff Rate Quotas) Regulation 2016* (the Amendment Regulation) is to amend the Regulation to prescribe additional charges for the issue of tariff rate quota certificates to be granted under orders made under the recently enacted section 23A of the *Export Control Act 1982*.

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
Deputy Prime Minister and Minister for Agriculture and Water Resources