**EXPLANATORY STATEMENT**

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

*Export Charges (Imposition—General) Act 2015*

*Export Charges (Imposition—General) Amendment (Norfolk Island Plants) Regulation 2016*

**Legislative Authority**

Section 15 of the *Export Charges (Imposition—General) Act 2015* (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.

**Purpose**

The purpose of the *Export Charges (Imposition—General) Regulation 2015* (Imposition General Regulation) is to prescribe charges in relation to the export of regulated goods or regulated matters relating to the export of regulated goods which are not considered a duty of customs or excise within the meaning of section 55 of the Constitution. The Imposition General 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 purpose of the *Export Charges (Imposition—General) Amendment (Norfolk Island Plants) Regulation 2016* (Amendment Imposition General Regulation) is to amend the Imposition General Regulation giving effect to charging for services provided by the Department of Agriculture and Water Resources (the department) in relation to the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016* (Norfolk Order)*.*

**Background**

The *Export Control Act 1982* (EC Act) provides for the control of the export of certain goods and for related purposes. However, the EC Act explicitly excludes its application to Australian external territories, unless regulations have been made to extend the EC Act.

The*Export Control (Plants and Plant Products) Order 2011* regulates the export of prescribed grain, fresh fruits, fresh vegetables, hay and straw, and plants and plant products for which a phytosanitary or any other certificate is required, by declaring those goods to be prescribed goods under the EC Act and specifying the conditions and restrictions for their export. The department undertakes inspection and certification activities in relation to the preparation of prescribed goods for export.

In May 2015 the *Norfolk Island Legislation Amendment Act 2015* and related Acts came into effect. These Acts provide for the Australian Government to assume responsibility for funding and delivering national and state level services to Norfolk Island. From 1 July 2016 Australian mainland taxation, social security, immigration, biosecurity, customs and health arrangements, including Medicare and the Pharmaceutical Benefits Scheme, were extended to Norfolk Island. Prior to these changes, Norfolk Island was a self-governing external territory of Australia.

Amendments made on 1 July 2016 to section 18 of the *Norfolk Island Act 1979* provide that an Act or a provision of an Act extends to Norfolk Island unless the Act or another Act expressly excludes it.

The Norfolk Order allows the Australian Government to provide phytosanitary certification for plants and plant product exports from Norfolk Island.

The Imposition General Regulation as amended by the Amendment Imposition General Regulation operates 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) Order 2015.*

**Impact and Effect**

The Norfolk Order extends specific sections of the EC Act and subordinate legislation to Norfolk Island. The Norfolk Order adopts existing export processes and practices used by the Norfolk Island Administration prior to 1 July 2016. Processes and practices are in accordance with Australian export requirements and allows Norfolk Island plant exporters to meet importing country requirements, including the requirement for phytosanitary certification.

The Imposition General Regulation as amended by the Amendment Imposition General Regulation will allow the department to appropriately recover the costs for providing export services on Norfolk Island by imposing charges which are not considered duties of customs or duties of excise within the meaning of section 55 of the Constitution. The Imposition General 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.

**Consultation**

Consultation was undertaken on Norfolk Island by departmental staff prior to cessation of self-government on 30 June 2016 via a number of public forums. Public forums were attended by island administration, local Biosecurity staff, shipping agents, local businesses and individuals. Changes with the introduction of the proposed Norfolk Orderare considered to be minimal.

The Office of Best Practice Regulation has advised that the Norfolk Order and associated consequential amendments are minor in nature and do not require a regulation impact statement (ID 21006).

The Amendment Imposition General Regulation is 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 is set out in the Attachment.

The Amendment Imposition General Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Export Charges (Imposition—General) Amendment (Norfolk Island Plants) Regulation 2016***

Section 1

This section provides that the name of this Regulation is the *Export Charges (Imposition–General) Amendment (Norfolk Island Plants) Regulation 2016*.

Section 2

This section provides that the Order commences on 1 December 2016.

Section 3

This section provides that the Amendment Imposition General Regulation is made under the *Export Charges (Imposition–General) Act 2015*.

Section 4

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**

Section 5 Definitions - Consequential Amendments

This section provides definitions of terms used in the Imposition General Regulation. This ensures the meaning of these terms is clear. Many of the definitions in the Imposition General Regulation have the same meaning as when those terms are used in other Acts, legislative instruments (orders) or Australian Standards.

This item amends the definition of ‘Plants’ and ‘Plant Products’ that are prescribed goods to include those under the *Export Control (Plants and Plant Products) Order 2011* or the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016*.

**ATTACHMENT**

**Statement of Compatibility with Human Rights**

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

***Export Charges (Imposition—General) Amendment (Norfolk Island Plants) 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 purpose of the *Export Charges (Imposition—General) Regulation 2015* (Imposition General Regulation) is to prescribe charges in relation to the export of regulated goods or regulated matters relating to the export of regulated goods which are not considered a duty of customs or excise within the meaning of section 55 of the Constitution. The Imposition General 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 purpose of the *Export Charges (Imposition—General) Amendment (Norfolk Island Plants) Regulation 2016* is to amend the Imposition General Regulation giving effect to charging for services provided by the Department of Agriculture and Water Resources in relation to the *Export Control (Plants and Plant Products - Norfolk Island) Order 2016.*

**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**