

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

Biosecurity Charges Imposition (Customs) Act 2015

*Biosecurity Charges Imposition (Customs) Amendment (Approved Arrangements)
Regulations 2018*

Legislative Authority

The *Biosecurity Charges Imposition (Customs) Act 2015* (the Act) imposes, as taxes, charges in relation to matters connected with the administration of the *Biosecurity Act 2015* (the Biosecurity Act), so far as those charges are duties of customs, and for related purposes.

Section 12 of 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 this Act. Section 7 of the Act provides that the Governor-General may prescribe in regulations a charge in relation to a prescribed matter connected with the administration of the Biosecurity Act.

Subsection 8(2) of the Act provides that before the Governor-General makes a regulation under subsection 7(1) prescribing a charge in relation to a matter, the Minister 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.

Purpose

The purpose of the *Biosecurity Charges Imposition (Customs) Amendment (Approved Arrangements) Regulations 2018* (the Regulations) is to amend the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Customs Regulation) to introduce a charge in relation to the entry of information into the automated entry processing system, a new throughput charge in relation to some types of biosecurity approved arrangements.

This throughput charge applies to each entry made under the under the Automatic Entry Processing System (AEP). A rate of \$18 is charged for each entry of information into the automated entry processing system by a person covered by an approved arrangement, about goods to be brought or imported into Australian territory.

Background

The Department of Agriculture and Water Resources (the department) provides biosecurity services under the Act through cost recovered arrangements. Costs are recovered through both fees and charges, imposed in accordance with the Australian Government Charging Framework and the Australian Government Cost Recovery Guidelines.

Charging is undertaken under the Act, the *Biosecurity Charges Imposition (Excise) Act 2015* and the *Biosecurity Charges Imposition (General) Act 2015* (the General Act). These Acts provide the taxing legislation framework necessary to support cost recovery charges.

Specific charges (including the existing biosecurity approved arrangement charge) are prescribed in the Customs Regulation and the *Biosecurity Charges Imposition (General) Regulation 2016*.

Under the legislative framework for biosecurity cost recovery, charges are imposed under both the Act and the Customs Act. For the avoidance of any doubt as to the technical classification of the charge in the customs and taxation context, all charges appear in identical form in regulations made under each of the Acts.

The department's financial modelling has confirmed that the price of the biosecurity approved arrangement throughput charge is designed to recover no more than the Commonwealth's likely costs in connection with the prescribed matter to which the charge relates.

Biosecurity approved arrangements have been regulated by the Australian Government in various forms since the late 1990s, and have been regulated under the Biosecurity Act since 16 June 2016. Approved arrangements, previously Quarantine Approved Premises and Compliance Agreements, are voluntary arrangements entered into with the department.

These arrangements allow operators to manage biosecurity risks and/or perform the documentary assessment of goods in accordance with departmental requirements, using their own premises, facilities, equipment and people, and without constant supervision by the department but with compliance monitoring or auditing still undertaken by the department.

The approved arrangement annual charge is in place to recover the cost of maintaining the approved arrangement system. In addition to the annual charge, there are associated fee-for-service charges that are imposed on approved arrangement holders. These include fees-for-service for assessment of applications and audits of approved arrangements.

A key objective of the 2015 redesign of the department's cost recovery arrangements was to remove areas of under recovery and inequity. As part of this redesign, a flat annual charge of \$2,900 for all holders of import approved arrangement was introduced. An approved arrangement allows businesses to manage biosecurity risk in accordance with departmental requirements, using their own premises, facilities, equipment and people, and/or perform the documentary assessment of goods without constant supervision by the department.

A range of different activities come under the scope of biosecurity approved arrangements. Customs brokers operating a biosecurity approved arrangement must be registered as a class 19.1 Non-Commodity for Containerised Cargo Clearances (NCCC). They can also choose to register under class 19.2 Automatic Entry Processing for Commodities (AEP).

Currently, class 19.1 and 19.2 approved arrangement participants (brokers) are subject to the same annual charges as non-broker classifications (being the annual charge of \$2,900, set out in item 13 of section 9 of the Customs Regulation).

The current approved arrangement charge allows brokers to make an unlimited number of AEP entries, with no additional AEP entry fees payable.

Industry requested that the department provide an alternative arrangement to enable a levy to be charged per entry lodged into the department's electronic systems by brokers who are

operating under the AEP arrangement. This will allow those brokers operating in the AEP environment to pass on the per entry charge directly to the clients using the AEP service.

Impact and Effect

The addition of a throughput based charge point to recover costs associated with AEP activities provides a more equitable and focused charge for operators of AEP arrangements.

The throughput charge applies to entries made under the Automatic Entry Processing for Commodities (AEP) scheme.

The amount of \$18 is charged for each entry of information into the department's automated processing system, by a person covered by an approved arrangement, about goods to be brought or imported into Australian territory.

The \$18 per entry charge amount for the throughput charge reflects the modelled expense base of the biosecurity activities of the AEP program. It also reflects the most recent volume projections available to the department.

Applicants who do not currently hold an approved arrangement who approach the department with a new application for an approved arrangement will continue to be charged the existing "new approved arrangement levy" of \$180 (set out in item 12 of section 9 of the Customs Regulations).

The department's standard biosecurity fees of \$30 per 15 minutes in-office (section 106, item 1 of the *Biosecurity Regulation 2016*), and \$50 per 15 minutes out of office (section 106, item 12 of the *Biosecurity Regulation 2016*) continues to be apply for all activities performed in the assessment of the applications and associated audit activity.

Consultation

Consultation with relevant departmental industry committees occurred from January 2017 to March 2018. Public consultation occurred from November 2017 to January 2018. The general theme of responses from stakeholders was that the proposed charging mechanism provided a balanced approach to cost recovery for approved arrangements. The use of the \$18 per entry throughput charge was seen by stakeholders as a more suitable way of recovering the costs of the AEP scheme from the participating brokers.

Details/ Operation

Details of the Regulations are set out in [Attachment A](#).

Other

The 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 is set out in [Attachment B](#).

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

Details of the *Biosecurity Charges Imposition (Customs) Amendment (Approved Arrangements) Regulations 2018*

Section 1 – Name

This section provides that the name of the Regulations is the *Biosecurity Charges Imposition (Customs) Amendment (Approved Arrangements) Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 September 2018.

Section 3 – Authority

This section provides that the Regulations are made under the *Biosecurity Charges Imposition (Customs) Act 2015*.

Section 4 – Schedules

This section provides that the instrument specified in the Schedule to the Regulations is amended as set out in the applicable items in the Schedule.

Schedule 1 – Amendments

Item 1 – Section 6

This item inserts two definitions into the Customs Regulation at section 6:

The item provides that the term ‘Agriculture Department’ has the same meaning as in the Biosecurity Act 2015

The item provides that term ‘automated entry processing system’ means the system made available by the Agriculture Department for the purpose of enabling persons covered by approved arrangements to give that Department information about goods to be brought or imported into Australian territory.

Item 2 - Section 9 (after table item 13)

This item inserts the approved arrangement throughput charge point into the table of charges for biosecurity matters in section 9. That item in the table, 13A, provides that each entry into the automated entry processing system, by a person covered by an approved arrangement, about goods to be brought or imported into Australian territory, is subject to a charge of \$18.

Item 3 – At the end of section 10

This item adds a provision in section 10, which provides exemptions from charges imposed under section 9. This provides that a person is not liable to pay the charge prescribed by item 13A of the table in section 9 for entering information into the automated entry processing

system if the person has paid the charge prescribed by item 13A of the table in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016*.

This exemption is necessary because under the legislative framework for biosecurity cost recovery, charges are imposed under both the *Biosecurity Charges Imposition (General) Act 2015* and the *Biosecurity Charges Imposition (Customs) Act 2015*. The exemptions set out in section 10 provide clarity that the charges are only to be paid once under one Regulation – so that the legislative framework does not inadvertently result in multiple charging for the same item.

Statement of Compatibility with Human Rights

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

Biosecurity Charges Imposition (Customs) Amendment (Approved Arrangements) Regulations 2018

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 *Biosecurity Charges Imposition (Customs) Amendment (Approved Arrangements) Regulations 2018* is to introduce a new throughput charge for some types of biosecurity approved arrangements. The throughput charge applies to an entry made under the under the Automatic Entry Processing System (AEP) scheme.

A rate of \$18 will be charged for each entry of information into the department's electronic systems by a person covered by an approved arrangement under the AEP scheme.

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. David Littleproud MP
Minister for Agriculture and Water Resources