EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

Biosecurity Charges Imposition (Customs) Act 2015

Biosecurity Charges Imposition (Customs) Amendment (2022 Measures No. 1) Regulations 2022

Legislative Authority

The *Biosecurity Charges Imposition (Customs) Act 2015* (the Act) is an Act to impose, 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 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 Biosecurity Act, but only so far as that charge is a duty of customs within the meaning of section 55 of the Constitution. Subsection 7(3) of the Act provides that multiple charges under subsection 7(1) may be prescribed in relation to the same matter, and a single charge under subsection 7(1) may be prescribed in relation to multiple matters.

Subsection 8(1) of the Act provides that a regulation may prescribe a charge under subsection 7(1) by specifying an amount as the charge or the method for calculating the amount of a charge. Subsection 8(2) provides that, before the Governor-General makes a regulation under subsection 7(1), 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.

Section 10 of the Act provides that a regulation may provide for exemptions from a charge prescribed under subsection 7(1).

For the purposes of subsection 8(2) of the Act, the Minister for Agriculture, Fisheries and Forestry has certified that he is satisfied that the amount of the charge in the *Biosecurity Charges Imposition (Customs) Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) is set at a level designed to recover no more than the Commonwealth's likely costs in connection with the prescribed matter to which it relates. The financial modelling of the Department of Agriculture, Fisheries and Forestry (the department) has confirmed that the price of the charge in the Amendment Regulations is designed to recover no more than the Commonwealth's likely costs in connection with the item to which the charge relates.

Purpose

The purpose of the Amendment Regulations is to amend the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Principal Regulation) to increase an existing charge in relation to goods that are the subject of an import declaration and that have been brought into

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Australian territory on a vessel. This charge is a duty of customs within the meaning of section 55 of the *Constitution*. The Amendment Regulations are made under the Act.

The Amendment Regulations increase the charge to support the partial cost recovery from industry, consistent with the Australian Government Charging Framework, of $96.9 million funding over four years from 2021-22 to manage the biosecurity risk posed by hitchhiker pests arriving in imported cargo. This funding is included in the Government's $850.4 million Agriculture 2030 package as part of the 2021-22 Budget.

Background

The department regulates diseases and pests that may cause harm to human, animal or plant health or the environment under the Biosecurity Act. The department recovers the costs of undertaking these regulatory functions through 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*. These Acts provide the taxing legislation framework necessary to support cost recovery charges.

The Amendment Regulations provide for the implementation of the increased charge in conjunction with the *Biosecurity Charges Imposition (General) Regulation 2016* (General Regulation). The General Regulation prescribes charges in relation to matters connected with the administration of the Biosecurity Act which are considered neither duties of customs nor duties of excise within the meaning of section 55 of the *Constitution*. Where a charge is prescribed under both the Principal Regulation and General Regulation, it will only apply under the regulation for which it is valid.

Impact and Effect

The Amendment Regulations provide for the increased charge to be implemented from 16 January 2023.

The charge for risk profiling, surveillance, monitoring compliance and administration of other biosecurity matters is increased from $49 to $58 for each import declaration in relation to goods that have been brought into Australian territory on a vessel. This charge is connected with the administration of the Biosecurity Act.

The increase in price set out in the Amendment Regulations reflects the increase in the department's costs as a result of managing the biosecurity risk posed by hitchhiker pests arriving in imported cargo. The price has been based on the modelling set out in the cost recovery implementation statement (CRIS), and is no higher than the department's expected costs of delivering the biosecurity regulatory functions for import declarations.

The Office of Best Practice Regulation (OBPR) determined that a regulation impact statement was not required for the increase to the charge for goods that are the subject of an import declaration and have been brought into Australian territory on a vessel (OBPR Ref: 22-02015).

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Consultation

Targeted consultation with industry has occurred through Industry Consultative Committees on the implementation of the hitchhiker measure since July 2021. Affected industry members have been advised of the department's approach to implementing the measure, with the cost to be recovered through the department's cost recovery reserves during the 2021-22 financial year, and then the ongoing cost to be recovered from industry in subsequent financial years.

Industry members have not raised any concerns with the proposed measure, and are otherwise aware that the measure requires the recovery of costs in order for the department to deliver more effective and efficient regulatory services.

During November 2022 the department undertook targeted engagement with key industry stakeholders and released an Import Industry Advice Notice which advised industry of the commencement date of the $9 increase for each import declaration made in relation to goods that have been brought into Australian territory on a vessel. The draft 2022-23 Biosecurity (Hitchhiker) Cost Recovery Implementation Statement was also made available.

The Secretary of the department and the then Minister for Agriculture and Northern Australia endorsed the 2021-22 Biosecurity Cost Recovery Implementation Statement, which includes a statement on the implementation of the government's 2021-22 Budget decision to invest $96.9 million (over 4 years) to manage the risk of hitchhiker pests and recover costs through regulatory charges. This CRIS was published on the department's website on 25 March 2022.

The Acting Secretary of the department and the Minister for Agriculture, Fisheries and Forestry also endorsed the 2022-23 Biosecurity (Hitchhiker) Cost Recovery Implementation Statement which describes the increased cost of services to manage the biosecurity risk posed by hitchhiker pests and how ongoing costs will be recovered.

Details and Operation

Details of the Amendment Regulations are set out in Attachment A.

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

The Amendment Regulations commence on 16 January 2023.

Other

The Amendment 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.

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ATTACHMENT A

Details of *Biosecurity Charges Imposition (Customs) Amendment (2022 Measures No. 1) Regulations 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity Charges Imposition (Customs) Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on 16 January 2023.

There is a note below the table, that provides the table relates only to the provisions of the Amendment Regulations as originally made. It will not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note is to clarify that the commencement of any subsequent amendments will not be reflected in this table.

Section 3 – Authority

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

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Regulations. This enables the amendment of the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Principal Regulation) (see Schedule 1 below).

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Schedule 1 – Amendments

Biosecurity Charges Imposition (Customs) Regulation 2016

Item [1] – Section 9 (table item 2, column 2)

Section 9 of the Principal Regulation provides for charges payable in relation to biosecurity matters. The charges are listed in the table in section 9, where column 1 of the table describes the biosecurity matter and column 2 describes the corresponding charges that apply for each matter. Table item 2 currently provides the charge for risk profiling, surveillance, monitoring compliance and administration of other biosecurity matters in relation to goods that are the subject of an import declaration and that have been brought into Australian territory on a vessel. The charge applies for each import declaration.

This item repeals and substitutes the charge described in column 2 of table item 2 in section 9 of the Principal Regulation. The charge is increased from $49 to $58 for each import declaration.

"Import declaration" has the same meaning as in the *Customs Act 1901* (the Customs Act), that is, an import declaration communicated to the Department of Home Affairs by document or electronically as mentioned in section 71A of the Customs Act.

"Biosecurity matter" is defined in the Principal Regulation to mean a matter connected with the administration of the Biosecurity Act.

"Goods" has the same meaning as in the Biosecurity Act. Under section 19 of the Biosecurity Act, "goods" includes an animal, plant, sample or specimen of a disease agent, a pest, mail and any other article, substance or thing (including, but not limited to, any kind of moveable property).

"Vessel" has the same meaning as in the Biosecurity Act, that is, any kind of vessel used in navigation by water, however propelled or moved, including a barge, lighter or other floating craft, an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water, and includes an installation and any floating structure (section 9 of the Biosecurity Act).

This charge is prescribed for the purposes of subsection 7(1) of the Act. In accordance with subsection 8(2) of the Act, the Minister for Agriculture, Fisheries and Forestry (the Minister) has certified that he is satisfied that the amount of the charge in the Amendment Regulation is set at a level designed to recover no more than the Commonwealth's likely costs in relation to the matter.

Item [2] – At the end of the instrument

This item adds new Part 3 – Application, saving and transitional provisions to the Principal Regulation. New section 11 in Part 3 provides for the application of the amendment made by item 1 of this Schedule.

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New section 11 provides that the amendment of section 9 made by item 1 of this Schedule applies in relation to goods that are the subject of an import declaration communicated on or after 16 January 2023.

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ATTACHMENT B

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 (2022 Measures No. 1) Regulations 2022

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 (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) is to increase an existing charge in relation to goods that are the subject of an import declaration and that have been brought into Australian territory on a vessel. This charge is a duty of customs within the meaning of section 55 of the *Constitution*.

The Amendment Regulations are made under the *Biosecurity Charges Imposition (Customs) Act 2015*. The Amendment Regulations amend the *Biosecurity Charges Imposition (Customs) Regulation 2016*.

The charge for risk profiling, surveillance, monitoring compliance and administration of other biosecurity matters is increased from $49 to $58 for each import declaration in relation to goods that have been brought into Australian territory on a vessel.

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.

Senator the Hon. Murray Watt
Minister for Agriculture, Fisheries and Forestry

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