

## **EXPLANATORY STATEMENT**

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

*Imported Food Charges (Collection) Act 2015*

*Imported Food Control Act 1992*

*Imported Food Legislation Amendment (2023 Measures No.1) Regulations 2023*

### **Legislative Authority**

The *Imported Food Control Act 1992* (the Act) provides for the inspection and control of food imported into Australia, and for related purposes. Section 36 of the Act provides that a person for whom a chargeable service is provided is liable to pay to the Commonwealth such amount in respect of the provision of that service as is prescribed. Section 43 of the Act provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Imported Food Charges (Collection) Act 2015* (the Collection Act) provides for the collection of imported food charges, and for related purposes. Section 22 of the Collection Act provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

### **Purpose**

The purpose of the *Imported Food Legislation Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) is to ensure more effective funding arrangements by amending payable amounts for certain chargeable services provided under the Act and clarifying the time by which such amounts become due and payable.

The Amendment Regulations amend the *Imported Food Control Regulations 2019* (the Principal Regulations) to implement amended payable amounts from 1 July 2023, to reflect the complexity, risk and effort associated with certain chargeable services. The Amendment Regulations also improve the effectiveness of the imported food control cost recovery framework by introducing annual indexation of payable amounts and making minor amendments to technical terms.

Further, the Amendment Regulations amend the *Imported Food Charges (Collection) Regulation 2015* (the Collection Regulation), which provides for the collection of imported food charges.

## **Background**

Under the Imported Food Control Act, the Department of Agriculture, Fisheries and Forestry (the department) inspects food that is imported into Australia to assess whether it meets Australian requirements for public health and safety, and whether it complies with the Australia New Zealand Food Standards Code and country of origin food labelling standards. The department recovers the costs of undertaking these regulatory functions through fees and charges, imposed in accordance with the Australian Government Charging Framework.

Charging is undertaken under the Act, the *Imported Food Charges (Imposition—Customs) Act 2015*, the *Imported Food Charges (Imposition—General) Act 2015* and the *Imported Food Charges (Imposition—Excise) Act 2015*. These Acts provide the tax legislation framework necessary to support cost recovery charges. Specific charges and payable amounts for imported food regulatory functions are prescribed in the Principal Regulations, the *Imported Food Charges (Imposition—Customs) Regulation 2016* (the Customs Regulation) and the *Imported Food Charges (Imposition—General) Regulation 2016* (the General Regulation).

The Customs Regulation prescribes charges in relation to matters connected with the administration of the Act which are considered duties of customs within the meaning of section 55 of the Constitution. The General Regulation prescribes charges in relation to matters connected with the administration of the 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 Customs Regulation and General Regulation, only one charge will apply, and it will be under the regulation for which it is valid.

## **Impact and Effect**

The Amendment Regulations provide for the new charges to be implemented from 1 July 2023.

The new charges in the Amendment Regulations were determined through a comprehensive internal review of the regulatory activities that the department currently undertakes under the imported food control framework.

The Amendment Regulations are necessary because the existing charges are no longer sufficient to recover the costs of Australia's regulatory effort in relation to managing imported food safety risks. Imported food control cost recovery arrangements were last comprehensively reviewed in 2015. Charges relating to the imported food control framework have remained unchanged since that time. However, the costs of delivering the relevant regulatory functions have increased due to inflationary impacts on staff wages, supplier and operating costs to manage new and evolving risks.

The Amendment Regulations are intended to re-align charges with the actual cost of delivering these chargeable services. This is crucial to allow the department to manage imported food safety risks efficiently and effectively.

The new charges are based on the modelling set out in the 2023-24 Biosecurity Cost Recovery Implementation Statement (CRIS) and are no higher than the department's

expected costs of delivering the relevant chargeable services relating to imported food control.

The Office of Impact Analysis (OIA) determined that an Impact Analysis Assessment was required to assess the regulatory burden on affected parties. In undertaking this analysis consideration was given to the views of stakeholders, and how the department intends to evaluate and consider the implementation of changes to regulatory charging. The Impact Analysis Assessment was approved in June 2023, and released on the OIA's website.

## **Consultation**

Public consultation on the changes was conducted using the Have Your Say platform on the department's website from 27 March to 24 April 2023. An extension to 1 May 2023 was granted to several stakeholders who requested further time. The department received 49 submissions in response to the release of a consultation paper and invitation to provide feedback via the Have Your Say survey platform on the department's website.

Targeted consultation with all key industry groups was conducted through the department's various industry consultative committees (consisting of 7 formal meetings) as well as direct engagement with industry stakeholders. An online public open forum was also held, during which the department engaged with more than 76 industry participants.

Feedback received through these avenues was considered by the department and the Minister for Agriculture, Fisheries and Forestry (the Minister) and informed the development of the 2023-24 CRIS. The final CRIS was certified by the Secretary of the department and approved by the Minister. The CRIS was published on the department's website in June 2023.

The Department of the Prime Minister and Cabinet, the Department of Finance, the Department of Foreign Affairs and Trade, the Department of Home Affairs and the Australian Bureau of Statistics have been consulted on the changes.

## **Details and Operation**

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

The Amendment Regulations commence on 1 July 2023.

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

## **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 2022*. A full Statement of Compatibility with Human Rights is set out in [Attachment B](#).

**Details of the *Imported Food Legislation Amendment (2023 Measures No. 1) Regulations 2023***

**Section 1 – Name**

This section provides that the name of the instrument is the *Imported Food Legislation Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations).

**Section 2 – Commencement**

This section provides that the Amendment Regulations commence on 1 July 2023.

The note below the table provides that 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 *Imported Food Charges (Collection) Act 2015* (the Collection Act) and the *Imported Food Control Act 1992* (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 *Imported Food Control Regulations 2019* (the Principal Regulations) and the *Imported Food Charges (Collection) Regulation 2015* (the Collection Regulation).

## **Schedule 1 – Amendments**

### *Imported Food Control Regulations 2019*

Subsection 36(1) of the Act provides that that a person for whom a chargeable service is provided is liable to pay to the Commonwealth such amount in respect of the provision of that service as is prescribed.

Subsection 36(11) of the Act provides that a “chargeable service”, in relation to food to which the Act applies, means:

- an inspection, or inspection and analysis of the food; or
- arrangement by an authorised officer of an analysis of the food to be carried out by another person; or
- the issue of relevant documentation in respect of the food; or
- the supervision of the treatment, destruction or re-exportation of the food; or
- the entering into a compliance agreement in respect of the food; or
- the provision of any other service that is prescribed for the purpose of this definition.

### **Item [1] – Section 5 (definition of *in-office*)**

Section 5 of the Principal Regulations provides for definitions of terms used throughout the Principal Regulations, including the term *in-office*.

This item repeals and substitutes the definition of *in-office* in section 5 of the Principal Regulations.

The new definition of *in-office*, in relation to the provision of a chargeable service, means the provision of the service:

- at a post-entry quarantine facility; or
- at an office of the Department; or
- at a location that is agreed, for the purposes of facilitating a flexible working arrangement, between the person carrying out the service and the Department.

This amendment ensures that a chargeable service is considered “in-office” if it is provided at a post-entry quarantine facility or an office of the Department. A chargeable service is also considered “in-office” if it is provided at a location that is agreed, for the purposes of facilitating a flexible working arrangement, between the person carrying out the service and the Department. This is intended to cover situations where the chargeable service is provided at departmental locations (such as a post-entry quarantine facility or Department office) or where the person may be working at their home office to provide the chargeable service, due to a flexible working arrangement agreed with the Department.

The payable amount of an “in-office” chargeable service varies depending on the kind of service set out in subsection 30(1) of the Principal Regulations (as amended by items [4] to [10] of this Schedule). The payable amount of an “in-office” chargeable service is generally lower than the corresponding service that is provided “out-of-office” (see item [2] of this Schedule), as it does not include provision for travel costs or other costs to support the person’s work at the out-of-office location.

### **Item [2] – Section 5 (definition of *out-of-office*)**

Section 5 of the Principal Regulations provides for definitions of terms used throughout the Principal Regulations, including the term *out-of-office*.

This item repeals and substitutes the definition of *out-of-office* in section 5 of the Principal Regulations.

The new definition of *out-of-office*, in relation to the provision of a chargeable service, means the provision of the service other than at:

- a post-entry quarantine facility; or
- an office of the Department; or
- at a location that is agreed, for the purposes of facilitating a flexible working arrangement, between the person carrying out the service and the Department.

This amendment ensures that a chargeable service is considered “out-of-office” if it is not provided at a post-entry quarantine facility, an office of the Department, or a location that is agreed, for the purposes of facilitating a flexible working arrangement, between the person carrying out the service and the Department. This is intended to exclude situations where the chargeable service is provided at departmental locations (such as a post-entry quarantine facility or Department office) or where the person may be working at their home office to provide the chargeable service, due to a flexible working arrangement agreed with the Department.

The payable amount of an “out-of-office” chargeable service varies depending on the kind of service set out in subsection 30(1) of the Principal Regulations (as amended by items [4] to [10] of this Schedule). The payable amount of an “out-of-office” chargeable service is generally higher than the corresponding service that is provided “in-office” (see item [1] of this Schedule), as it includes provision for travel costs or other costs to support the person's work at the out-of-office location.

### **Item [3] – Section 5**

Section 5 of the Principal Regulations provides for definitions of terms used throughout the Principal Regulations.

This item inserts a new definition for the term *post-entry quarantine facility*. The term *post-entry quarantine facility* has the same meaning as in the *Biosecurity Regulation 2016*, that is, a facility operated by, or on behalf of, the Commonwealth for the purpose of assessing and managing biosecurity risks associated with goods.

### **Item [4] – Section 30**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services.

This item inserts “(1)” before the words “For the purposes of” in section 30 of the Principal Regulations.

This amendment is consequential to the insertion of new subsections 30(2) and (3), as made by item [11] of this Schedule.

**Item [5] – Section 30 (table item 1, column 2)**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services. The payable amounts are listed in the table in section 30, where column 1 of the table describes the chargeable service and column 2 describes the corresponding amounts that apply for each chargeable service.

Table item 1 provides the payable amount that applies for each authorised officer providing in-office chargeable services on a business day during ordinary hours of duty. These services comprise of an in-office assessment, issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training or other chargeable service in relation to food to which the Act applies.

This item omits and substitutes the payable amount described in column 2 of table item 1 in section 30 of the Principal Regulations. The amount is increased from \$30 to \$37 for each authorised officer providing the chargeable service, for each quarter hour (or part thereof).

Under section 5 of the Principal Regulations:

- “ordinary hours of duty”, in relation to a business day, means the period that begins at 6.30 am and ends at 6.30 pm on that day;
- “relevant documentation” has the meaning given by subsection 36(11) of the Act, that is, a food control certificate (if the food is examinable food) and an imported food inspection advice (if the food is required to be inspected, or inspected and analysed).

“In-office” is also defined in section 5 of the Principal Regulations, as amended by item [1] of this Schedule.

**Item [6] – Section 30 (cell at table item 2, column 2)**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services. The payable amounts are listed in the table in section 30, where column 1 of the table describes the chargeable service and column 2 describes the corresponding amounts that apply for each chargeable service.

Table item 2 provides the payable amount that applies for each authorised officer providing in-office chargeable services on a business day outside ordinary hours of duty. These services are those referred to in table item 1 in section 30, and comprise of an in-office assessment, issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training or other chargeable service in relation to food to which the Act applies.

This item repeals and substitutes the cell in column 2 of table item 2 in section 30 of the Principal Regulations. The relevant amount differs depending on the circumstances in which the chargeable service is provided.

If the chargeable service is provided immediately before or immediately after an in-office chargeable service provided by the authorised officer during ordinary hours of duty, then there is an amount of \$55 (base amount) for each authorised officer providing the service, for each quarter hour (or part thereof). In any other case, the payable amount for each authorised officer providing the service is twice the dollar amount of the base amount (for the first half hour), plus \$55 for each quarter hour (or part thereof) after the first half hour.

As mentioned above, section 5 of the Principal Regulations, as amended by item [1] of this Schedule, provides definitions for “in-office” and “ordinary hours of duty”.

**Item [7] – Section 30 (cell at table item 3, column 2)**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services. The payable amounts are listed in the table in section 30, where column 1 of the table describes the chargeable service and column 2 describes the corresponding amounts that apply for each chargeable service.

Table item 3 provides the payable amount that applies for each authorised officer providing in-office chargeable services on a Saturday, a Sunday or a public holiday in the place where the service is provided. These services are those referred to in table item 1 in section 30, and comprise of an in-office assessment, issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training or other chargeable service in relation to food to which the Act applies.

This item repeals and substitutes the cell in column 2 of table item 3 in section 30 of the Principal Regulations. The base amount is \$60. The payable amount for each person carrying out the chargeable service is twice the dollar amount of the base amount (for the first half hour), plus \$60 for each quarter hour (or part thereof) after the first half hour.

As mentioned above, section 5 of the Principal Regulations, as amended by item [1] of this Schedule, provides definitions for “in-office” and “ordinary hours of duty”.

**Item [8] – Section 30 (cell at table item 4, column 2)**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services. The payable amounts are listed in the table in section 30, where column 1 of the table describes the chargeable service and column 2 describes the corresponding amounts that apply for each chargeable service.

Table item 4 provides the payable amount that applies for each authorised officer providing out-of-office chargeable services on a business day during ordinary hours of duty. These services comprise of an out- of- office assessment, issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training or other chargeable service in relation to food to which the Act applies.

This item repeals and substitutes the cell in column 2 of table item 4 in section 30 of the Principal Regulations. If the chargeable service is provided for a period of less than 7.5 hours, then there is a payable amount of \$62 for each authorised officer providing the chargeable

service, for each quarter hour (or part thereof). In any other case, the payable amount for each authorised officer providing the chargeable service is \$1,221 for each 7.5 hours, plus \$62 for each additional quarter hour (or part thereof).

As mentioned above, section 5 of the Principal Regulations, as amended by item [2] of this Schedule, provides definitions for “ordinary hours of duty”, “out-of-office” and “relevant documentation”.

#### **Item [9] – Section 30 (cell at table item 5, column 2)**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services. The payable amounts are listed in the table in section 30, where column 1 of the table describes the chargeable service and column 2 describes the corresponding amounts that apply for each chargeable service.

Table item 5 provides the payable amount that applies for each authorised officer providing out-of-office chargeable services on a business day outside ordinary hours of duty. These services are those referred to in table item 4 in section 30 and comprise of an out-of-office assessment, issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training or other chargeable service in relation to food to which the Act applies.

This item repeals and substitutes the cell in column 2 of table item 5 in section 30 of the Principal Regulations. The relevant amount differs depending on the circumstances in which the chargeable service is provided.

If the chargeable service is provided immediately before or immediately after an out-of-office chargeable service provided by the authorised officer during ordinary hours of duty, then there is an amount of \$80 (base amount) for each authorised officer providing the service, for each quarter hour (or part thereof). In any other case, the payable amount for each authorised officer providing the service is twice the dollar amount of the base amount (for the first half hour), plus \$80 for each quarter hour (or part thereof) after the first half hour.

As mentioned above, section 5 of the Principal Regulations, as amended by item [2] of this Schedule, provides definitions for “ordinary hours of duty” and “out-of-office”.

#### **Item [10] – Section 30 (cell at table item 6, column 2)**

Section 30 of the Principal Regulations is made for the purposes of subsection 36(1) of the Act and provides for payable amounts in relation to chargeable services. The payable amounts are listed in the table in section 30, where column 1 of the table describes the chargeable service and column 2 describes the corresponding amounts that apply for each chargeable service.

Table item 6 provides the payable amount that applies for each authorised officer providing out-of-office chargeable services on a Saturday, a Sunday or a public holiday in the place where the service is provided. These services are those referred to in table item 4 in section 30 and comprise of an out-of-office assessment, issue of approval or other relevant documentation, inspection, treatment, audit, analysis, training or other chargeable service in relation to food to which the Act applies.

This item repeals and substitutes the cell in column 2 of table item 6 in section 30 of the Principal Regulations. The base amount is \$85. The payable amount for each person carrying out the chargeable service is twice the dollar amount of the base amount (for the first half hour), plus \$85 for each quarter hour (or part thereof) after the first half hour.

As mentioned above, section 5 of the Principal Regulations, as amended by item [2] of this Schedule, provides definitions for “ordinary hours of duty” and “out-of-office”.

#### **Item [11] – At the end of section 30**

This item inserts new subsections 30(2) and (3) in the Principal Regulations.

New subsection 30(2) applies where the amount of a charge specified in paragraph (a) of table item 2 or 5 in subsection 30(1) of the Principal Regulations (as amended by items [6] and [9] of this Schedule) is increased under new section 30A (as amended by item [12] of this Schedule). In such circumstances, this increased charge is used for the purposes of working out the amount of the charge under subparagraph (b)(i) of the corresponding table item.

New subsection 30(3) applies where the amount of a charge specified in paragraph (b) of table item 3 or 6 in subsection 30(1) of the Principal Regulations (as amended by items [7] and [10] of this Schedule) is increased under new section 30A (as amended by item [12] of this Schedule). In such circumstances, this increased charge is used for the purposes of working out the amount of the charge under paragraph (a) of the corresponding table item.

This amendment clarifies that the indexation of charges under new section 30A also affects the calculation of the amount of the charge under subparagraph (b)(i) of table item 2 or 5, or under paragraph (a) of table item 3 or 6, in subsection 30(1) of the Principal Regulations.

#### **Item [12] – After section 30**

This item adds new section 30A in the Principal Regulations. New section 30A provides for the indexation of charges.

New subsection 30A(1) applies where the indexation factor for an indexation day is greater than 1. Where this occurs, the dollar amounts mentioned in the table in subsection 30(1) of the Principal Regulations (as amended by items [4] to [10] of this Schedule) is replaced by the amount worked out using the formula in new subsection 30A(1). The formula requires the dollar amount of charge immediately before the indexation day to be multiplied by the indexation factor for the indexation day.

Under new subsection 30A(2), the amount worked out under new subsection 30A(1) is rounded to the nearest whole dollar, and by rounding 50 cents upwards.

New subsection 30A(3) provides for the formula that is used to work out the indexation factor for an indexation day. The formula requires the index number for the reference quarter to be divided by the index number for the base quarter.

Under new subsection 30A(4), the indexation factor is worked out to 3 decimal places, and by rounding up if the fourth decimal place is 5 or more.

New subsection 30A(5) requires the amounts to be worked out under new section 30A to use only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index. Such amounts are worked out by disregarding index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

New subsection 30A(6) provides for the following definitions of terms used in new section 30A:

- **base quarter** means the last December quarter before the reference quarter;
- **December quarter** means a period of 3 months starting on 1 October;
- **indexation day** means 1 July 2024 and each later 1 July;
- **index number**, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter;
- **reference quarter** means the December quarter immediately before the indexation day.

## **Schedule 2 – Amendments**

### *Imported Food Charges (Collection) Regulation 2015*

#### **Item [1] – Section 5**

Paragraph 8(a) of the Collection Act provides that the regulations may prescribe the time when a specified imported food charge is due and payable.

This item repeals and substitutes section 5 of the Collection Regulation. New section 5 is made for the purposes of paragraph 8(a) of the Collection Act and provides that an imported food charge (customs), or an imported food charge (general), is due and payable at certain times.

If the Department issues an invoice in relation to the charge that specifies the last day for payment of the charge, then the charge is due and payable by close of business on the last day specified in the invoice. In any other case, the charge is due and payable when a demand for payment of the charge is made.

This is intended to provide certainty as to the time at which a charge is due and payable. This ensures that any persons who are issued an invoice for a charge by the Department, will be able to rely on the last day specified in the invoice, as reflecting the date by which the charge is due and payable.

Under section 4 of the Collection Regulation, an “imported food charge (customs)” means a charge imposed under section 6 of the *Imported Food Charges (Imposition—Customs) Act 2015*, while an “imported food charge (general)” means a charge imposed under section 6 of the *Imported Food Charges (Imposition—General) Act 2015*.

**Statement of Compatibility with Human Rights**

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

***Imported Food Legislation Amendment (2023 Measures No. 1)  
Regulations 2023***

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 *Imported Food Legislation Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) amend the *Imported Food Control Regulations 2019* and the *Imported Food Charges (Collection) Regulation 2015* to implement amended charges from 1 July 2023, to reflect changes in the complexity, risk and effort associated with certain matters relating to the inspection and control of food imported into Australia.

The Amendment Regulations are made under the *Imported Food Charges (Collection) Act 2015* (the Collection Act) and the *Imported Food Control Act 1992* (the Act). The Act does not set the amounts of the charges and only authorises the imposition of charges prescribed in regulations.

The Amendment Regulations also improve the effectiveness of the imported food control cost recovery framework by introducing annual indexation of payable amounts, making minor amendments to technical terms and clarifying the time by which payable amounts become due and payable.

**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**