

EXPLANATORY STATEMENT

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

Biosecurity Charges Imposition (Customs) Act 2015

*Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1)
Regulations 2023*

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. The Biosecurity Act provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment. The Act does not set the amounts of the charges and only authorises the imposition of charges prescribed in regulations.

Subsections 7(1) and 7(4) of the Act provide that the regulations 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 the regulations 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 regulations 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 the regulations may provide for exemptions from a charge prescribed under subsection 7(1).

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.

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 charges in the *Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) are set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the prescribed matters to which they relate. The financial modelling of the Department of Agriculture, Fisheries and Forestry (the department) has confirmed that the prices of the charges in the Amendment Regulations are designed to recover no more than the Commonwealth's likely costs in connection with the matters to which the charges relate.

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 Amendment Regulations is to ensure more effective funding arrangements for certain matters connected with the administration of the Biosecurity Act by amending charges to support the cost recovery of related regulatory functions.

The Amendment Regulations amend the *Biosecurity Charges Imposition (General) Regulation 2016* (the Principal Regulation) to implement amended charges from 1 July 2023, to reflect the complexity, risk and effort associated with certain biosecurity matters. The Amendment Regulations also improve the effectiveness of the biosecurity charging framework by amending the composition of charges, introducing annual indexation of charges, and making minor amendments to technical terms.

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.

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 tax legislation framework necessary to support cost recovery charges. Specific charges and payable amounts for biosecurity regulatory functions are prescribed in the Principal Regulation, the *Biosecurity Charges Imposition (General) Regulation 2016* (the General Regulation) and the *Biosecurity Regulation 2016* (the Biosecurity Regulation).

Under the biosecurity cost recovery framework, 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, only one charge will apply, and it will be under the regulation for which it is valid. The Biosecurity Regulation prescribes fees where a service is provided directly to an individual, business or organisation, and reflects the activities carried out by, or on behalf of, the Commonwealth under the Biosecurity Act.

Impact and Effect

The Amendment Regulations provides 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 biosecurity cost recovery framework.

The Amendment Regulations are necessary because the existing charges are no longer sufficient to recover the costs of Australia's biosecurity regulatory effort. Biosecurity cost recovery arrangements were last comprehensively reviewed in 2015, following the enactment of the Biosecurity Act. Apart from minor price changes in 2018, 2020 and 2023, biosecurity charges have largely remained unchanged.

During this time, there has been increased complexity of biosecurity threats, due to shifting trade and travel patterns as well as major global disruptions such as the COVID-19 pandemic. This has placed significant pressure on the department's ability to deliver regulatory activities and to manage biosecurity risks efficiently and effectively. The Amendment Regulations are intended to re-align charges with the actual cost of delivering these regulatory activities. This is crucial to strengthening Australia's biosecurity system and supporting operational needs.

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 biosecurity regulatory functions.

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 on 13 April 2023 during which the department engaged with more than 76 industry participants.

Feedback received through these avenues was considered by the department 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 for Agriculture, Fisheries and Forestry. 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 *Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1) Regulations 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity Charges Imposition (Customs) 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 *Biosecurity Charges Imposition (Customs) Regulation 2016*.

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).

Schedule 1 – Amendments

Biosecurity Charges Imposition (Customs) Regulation 2016

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 the regulations may prescribe a charge in relation to a prescribed matter connected with the administration of the *Biosecurity Act 2015* (Biosecurity Act), but only so far as that charge is a duty of customs within the meaning of section 55 of the *Constitution*.

Subsection 8(1) of the Act provides that the regulations 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 regulations 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 the regulations may provide for exemptions from a charge prescribed under subsection 7(1) of the Act.

Item [1] – Section 6

Section 6 of the Principal Regulation provides for definitions of terms used throughout the Principal Regulation.

This item inserts definitions for the terms ***Class 19 Arrangement***, ***compliance agreement*** and ***non-commercial vessel***.

A ***Class 19 Arrangement*** is defined as an approved arrangement that provides for the person covered by the arrangement to assess documents to manage biosecurity risks associated with containerised sea freight, and does not require the person to carry out biosecurity activities at a particular place.

A ***compliance agreement*** has the same meaning as in the *Imported Food Control Act 1992* (Imported Food Control Act). Under section 35A of the Imported Food Control Act, the Secretary may, on behalf of the Commonwealth, enter into a compliance agreement with a person in connection with:

- the application of particular procedures in respect of food that may be imported into Australia in accordance with the agreement;
- the keeping of records by the person in respect of the person's compliance with those procedures; and
- the supervision, monitoring and testing of the person's compliance with those procedures.

The insertion of the definitions of ***Class 19 Arrangement*** and ***compliance agreement*** is consequential to the amendment to table item 13 in section 9 of the Principal Regulation, made by item [13] of this Schedule.

A **non-commercial vessel** has the same meaning as in the *Biosecurity Regulation 2016* (the Biosecurity Regulation), that is, a vessel that is used, or is intended to be used, wholly for recreational purposes (whether or not crew are employed on the vessel) (section 5 of the Biosecurity Regulation). This amendment is consequential to the amendment to table item 14 in section 9 of the Principal Regulation, made by item [15] of this Schedule.

Item [2] – Section 9

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and provides for charges payable in relation to biosecurity matters.

This item omits the words “For subsection 7(1)” and substitutes “(1) For the purposes of subsection 7(1)” in section 9 of the Principal Regulation.

This amendment is consequential to the insertion of new subsection 9(2), made by item [16] of this Schedule.

Items [3] and [4] – Section 9 (table item 1, column 2 and table item 2, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 1 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 an aircraft. The charge applies for each import declaration.

Item [3] omits and substitutes the charge described in column 2 of table item 1 in section 9 of the Principal Regulation. The charge is increased from \$38 to \$43 for each import declaration.

Table item 2 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.

Item [4] omits and substitutes the charge described in column 2 of table item 2 in section 9 of the Principal Regulation. The charge is increased from \$58 to \$63 for each import declaration.

“Biosecurity matter” is defined in section 6 of 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).

“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.

“Aircraft” has the same meaning as in the Biosecurity Act, that is, any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth’s surface (section 9 of the Biosecurity Act).

“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).

The charges are 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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the Department of Agriculture, Fisheries and Forestry (the department) has confirmed that the prices of the charges in items [3] and [4] are designed to recover no more than the Commonwealth’s likely costs in connection with the matters to which the charges relate.

Item [5] – Section 9 (table item 3, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 3 provides the charge for an application for a permit under section 177 of the Biosecurity Act authorising goods to be brought or imported into Australian territory.

This item omits and substitutes the charge described in column 2 of table item 3 in section 9 of the Principal Regulation. The charge is increased from \$120 to \$122 for an application for a permit.

Section 177 of the Biosecurity Act relates to conditionally non-prohibited goods, which must not be brought or imported into Australian territory unless specified conditions (such as a condition requiring a permit to be granted by the Director of Biosecurity) have been complied with. As mentioned above, “goods” has the same meaning as in section 19 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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of

the charge in this item is designed to recover no more than the Commonwealth's likely costs in connection with the matter to which the charge relates.

Item [6] – Section 9 (table items 4 to 6)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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.

This item repeals current table items 4 to 6 and substitutes new table items 4 to 6A in section 9 of the Principal Regulation.

New table item 4 provides a charge for the reservation of a place in a post-entry quarantine facility for a horse, and administration and management of biosecurity activities in relation to the horse. The charge is \$983 for each animal.

New table item 4A provides a charge for the confirmation of a reservation of a place in a post-entry quarantine facility for a horse, and administration and management of biosecurity activities in relation to the horse. The charge is \$3,934 for each animal.

New table item 4B provides a charge for the reservation of a place in a post-entry quarantine facility for a ruminant, and administration and management of biosecurity activities in relation to the ruminant. The charge is \$1,005 for each animal.

New table item 4C provides a charge for the confirmation of a reservation of a place in a post-entry quarantine facility for a ruminant, and administration and management of biosecurity activities in relation to the ruminant. The charge is \$4,019 for each animal.

New table item 5 provides a charge for the reservation of a place in a post-entry quarantine facility for an animal not covered by another item of this table, and administration and management of biosecurity activities in relation to the animal. The charge is \$253 for each animal.

New table item 5A provides a charge for the confirmation of a reservation of a place in a post-entry quarantine facility for an animal not covered by another item of this table, and administration and management of biosecurity activities in relation to the animal. The charge is \$1,012 for each animal.

New table item 6 provides a charge for the reservation of a place in a post-entry quarantine facility for a consignment of bees, and administration and management of biosecurity activities in relation to the consignment. The charge is \$837 for each consignment.

New table item 6A provides a charge for the confirmation of a reservation of a place in a post-entry quarantine facility for a consignment of bees, and administration and management of biosecurity activities in relation to the consignment. The charge is \$3,350 for each consignment.

“Post-entry quarantine facility” has the same meaning as in the Biosecurity Regulation, that is, a facility operated by, or on behalf of, the Commonwealth for the purpose of assessing and managing biosecurity risks associated with goods (section 5 of the Biosecurity Regulation).

Section 8 of the Principal Regulation outlines the circumstances in which one or more animals or eggs are taken to be a “consignment”.

“Biosecurity activities” are defined in section 7 of the Principal Regulation as activities to manage biosecurity risks associated with goods, premises or other things, but does not include husbandry services in relation to an animal, eggs or a plant.

This amendment splits charges for the administration and management of biosecurity activities in a post-entry quarantine facility for certain animals into two charges, namely, for the reservation and for the confirmation of a reservation. This aligns the structuring of cost recovery arrangements for horses, ruminants, bees and other animals with the existing arrangements for live birds (see table items 7 and 8 in section 9 of the Principal Regulation) and for birds’ eggs (see table items 9 and 10 in section 9 of the Principal Regulation).

The policy intention is that the reservation charge (in new table items 4, 4B, 5 and 6 in section 9) is payable upon making a booking to reserve a place in a post-entry quarantine facility. The confirmation charge (in new table items 4A, 4C, 5A and 6A in section 9) is payable at a subsequent date to confirm the reservation of the place in the post-entry quarantine facility.

The charges are 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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the prices of the charges in this item are designed to recover no more than the Commonwealth’s likely costs in connection with the matters to which the charges relate.

Items [7] and [8] – Section 9 (table item 7, column 2 and table item 8, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 7 provides the charge for the reservation of a place in a post- entry quarantine facility for a consignment of live birds, and administration and management of biosecurity activities in relation to the consignment. The charge applies for each consignment.

Item [7] omits and substitutes the charge described in column 2 of table item 7 in section 9 of the Principal Regulation. The charge is increased from \$2,810 to \$4,707 for each consignment.

Table item 8 provides the charge for the confirmation of a reservation of a place in a post- entry quarantine facility for a consignment of live birds, and administration and

management of biosecurity activities in relation to the consignment. The charge applies for each consignment.

Item [8] omits and substitutes the charge described in column 2 of table item 8 in section 9 of the Principal Regulation. The charge is increased from \$11,240 to \$18,827 for each consignment.

As mentioned above, “post-entry quarantine facility” has the same meaning as in section 5 of the Biosecurity Regulation, while “consignment” and “biosecurity activities” are defined in sections 7 and 8 of the Principal Regulation.

The charges are 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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the prices of the charges in items [7] and [8] are designed to recover no more than the Commonwealth’s likely costs in connection with the matters to which the charges relate.

Items [9] and [10] – Section 9 (table item 9, column 2 and table item 10, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 9 provides the charge for the reservation of a place in a post-entry quarantine facility for a consignment of birds’ eggs for hatching, and administration and management of biosecurity activities in relation to the consignment. The charge applies for each consignment.

Item [9] omits and substitutes the charge described in column 2 of table item 9 in section 9 of the Principal Regulation. The charge is increased from \$7,826 to \$13,109 for each consignment.

Table item 10 provides the charge for the confirmation of a reservation of a place in a post-entry quarantine facility for a consignment of birds’ eggs for hatching, and administration and management of biosecurity activities in relation to the consignment. The charge applies for each consignment.

Item [10] omits and substitutes the charge described in column 2 of table item 10 in section 9 of the Principal Regulation. The charge is increased from \$31,304 to \$52,434 for each consignment.

As mentioned above, “post-entry quarantine facility” has the same meaning as in section 5 of the Biosecurity Regulation, while “consignment” and “biosecurity activities” are defined in sections 7 and 8 of the Principal Regulation.

The charges are 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 has certified

that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth's likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the prices of the charges in items [9] and [10] are designed to recover no more than the Commonwealth's likely costs in connection with the matters to which the charges relate.

Item [11] – Section 9 (table item 11, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 11 provides the charge for the administration and management of biosecurity activities in relation to a plant, or plants, in a post-entry quarantine facility. The charge applies for each square metre, or part of a square metre, of space occupied by the plant or plants for each month or part of a month.

This item omits and substitutes the charge described in column 2 of table item 11 in section 9 of the Principal Regulation. The charge is increased from \$110 to \$291 for each square metre, or part of a square metre, of space occupied by the plant or plants for each month or part of a month.

As mentioned above, “post-entry quarantine facility” has the same meaning as in section 5 of the Biosecurity Regulation, while “biosecurity activities” is defined in section 7 of the Principal Regulation.

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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth's likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth's likely costs in connection with the matter to which the charge relates.

Item [12] – Section 9 (table item 12, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 12 provides the charge for an application for approval of a proposed arrangement under section 405 of the Biosecurity Act.

This item omits and substitutes the charge described in column 2 of table item 12 in section 9 of the Principal Regulation. The charge is increased from \$180 to \$194 for an application for approval of a proposed arrangement.

Section 405 of the Biosecurity Act relates to an application for the approval of a proposed arrangement that provides for the person to carry out specified activities to manage biosecurity risks associated with specified goods, premises or other things.

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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth's likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth's likely costs in connection with the matter to which the charge relates.

Item [13] – Section 9 (table item 13)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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.

This item repeals and substitutes table item 13 in section 9 of the Principal Regulation.

New table item 13 provides a charge for the development of a proposed arrangement that is approved under section 406 of the Biosecurity Act and the administration of the approved arrangement (the relevant arrangement). The charge applies for each financial year, or part of financial year, during which the approved arrangement is in force. The charge differs depending on:

- whether the person covered by the relevant arrangement is also covered by one or more other approved arrangements (the other arrangements) that are in force, or one or more compliance agreements that are in force;
- whether the relevant arrangement is a Class 19 Arrangement; and
- whether the relevant arrangement, any of the other arrangements or any of the compliance agreements are in force before 1 January in the financial year.

“Approved arrangement” has the same meaning as in the Biosecurity Act, that is, an arrangement for which an approval is in force under paragraph 406(1)(a), including a varied arrangement for which an approval is in force under that paragraph as it applies because of subsection 412(3) (section 10 of the Biosecurity Act).

“Compliance agreement” and “Class 19 Arrangement” are defined in section 6 of the Principal Regulation, as amended by item [1] of this Schedule.

This amendment is intended to reflect the increase in the complexity of biosecurity risks, particularly due to shifting cargo pathways and trade patterns, as well as increases in seasonal pests. Where a person is covered by multiple approved arrangements, additional effort is associated with the development and administration of the approved arrangements, together with the need for compliance monitoring of those arrangements by the department. Additional effort is also required where a person is covered by both an approved arrangement and one or more compliance agreements under the Imported Food Control Act. For this reason, the charge for a person, who is covered by multiple approved arrangements (or covered by an approved arrangement and one or more compliance agreements) at any time

during the financial year, is higher than the charge for a person who is only covered by one approved arrangement during the financial year.

This amendment also reflects differences in the risk and effort associated with different classes of approved arrangements. A “Class 19 Arrangement” differs from all other classes of approved arrangement in that it does not relate to a physical site or location, but rather relates to managing biosecurity risks by assessing documentary evidence relating to containerised sea freight. As such, a lower charge applies where the person is covered only by a “Class 19 Arrangement” because there is no need for the department to carry out on-site audits of the arrangement, unlike other classes of approved arrangement which relate to physical sites or locations.

Where a person has paid the charge that is made by this item, for a financial year, or part of a financial year, in relation to an approved arrangement, then they are not liable to pay that charge in relation to another approved arrangement or a compliance agreement, for that financial year, or part of a financial year (see new subsection 10(7) of the Principal Regulation, as amended by items [20] and [21] of this Schedule). For example, if a person is covered by multiple approved arrangements, then they are only liable to pay the charge that relates to multiple approved arrangements. The person is not liable to pay the charge multiple times for each of the approved arrangements that they are covered by.

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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth’s likely costs in connection with the matter to which the charge relates.

Item [14] – Section 9 (table item 13A)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 13A provides the charge for 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. The charge applies for each entry.

This item repeals and substitutes table item 13A in section 9 of the Principal Regulation. New table item 13A applies to 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, if the entry is not referred to the Agriculture Department for verification. The charge for each entry is increased from \$18 to \$20 for each entry.

“Automated entry processing system” is defined in section 6 of the Principal Regulation to mean the system made available by the Agriculture Department for the purpose of enabling persons covered by approved arrangements to give the department information about goods to be brought or imported into Australian territory.

As mentioned above, “approved arrangement” and “goods” have the same meaning as in sections 10 and 19 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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth’s likely costs in connection with the matter to which the charge relates.

Item [15] – Section 9 (cell at table item 14, column 2)

Section 9 of the Principal Regulation is made for the purposes of subsection 7(1) of the Act and 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 14 provides the charge for risk profiling, surveillance, monitoring compliance and administration of other biosecurity matters, in relation to the first mooring of a vessel at a port in Australian territory after the vessel enters Australian territory. The charge applies for each vessel.

This item repeals and substitutes the charge described in column 2 of table item 14 in section 9 of the Principal Regulation. The charge is \$155 for each vessel that is a non-commercial vessel, or \$1,354 for each vessel that is a vessel other than a non-commercial vessel.

“Port” has the same meaning as in the Biosecurity Act. Under section 9 of the Biosecurity Act, a “port” includes a harbour. As mentioned above, “vessel” is defined in section 9 of the Biosecurity Act, while a “non-commercial vessel” is defined in section 6 of the Principal Regulation, as amended by item [1] of this Schedule.

This amendment aligns the characterisation of different classes of vessels with the framework under the Biosecurity Regulation. The amendment is also intended to reflect differences in the complexity, risk and effort associated with risk profiling, surveillance, monitoring compliance and administration of other biosecurity matters of different classes of vessels.

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 has certified that he is satisfied that the amount of the charges in the Amendment Regulations are set at a level designed to recover no more than the Commonwealth’s likely costs in relation to the relevant matters. The financial modelling of the department has confirmed that the price of the charge in this item is designed to recover no more than the Commonwealth’s likely costs in connection with the matter to which the charge relates.

Item [16] – At the end of section 9

This item inserts new subsection 9(2) in the Principal Regulation.

New subsection 9(2) applies where an amount of a charge specified in paragraph (a), (c) or (e) of table item 13 in subsection 9(1) of the Principal Regulation (as amended by items [2] and [13] of this Schedule) is increased under new section 9A (as amended by item [17] of this Schedule). In such circumstances, this increased charge is used for the purposes of working out the amount of the charge under paragraph (b), (d) or (f) of table item 13 in subsection 9(1) of the Principal Regulation.

This amendment clarifies that the indexation of charges under new section 9A also affects the calculation of the amount of the charge under paragraph (b), (d) or (f) of table item 13 in subsection 9(1) of the Principal Regulation.

Item [17] – After section 9

This item inserts new section 9A in the Principal Regulation. New section 9A provides for the indexation of charges.

New subsection 9A(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 new subsection 9(1) of the Principal Regulation (as amended by items [2] to [15] of this Schedule) is replaced by the amount worked out using the formula in new subsection 9A(1). The formula requires the dollar amount of the charge immediately before the indexation day to be multiplied by the indexation factor for the indexation day.

Under new subsection 9A(2), the amount worked out under new subsection 9A(1) is rounded to the nearest whole dollar, and by rounding 50 cents upwards.

New subsection 9A(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 9A(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 9A(5) requires the amounts to be worked out under new section 9A 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 also 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 subsections 9A(6) and (7) provides for the application of the replacement amount in the following manner:

- where a dollar amount mentioned in table item 1 or 2 in subsection 9(1) of the Principal Regulation (as amended by items [3] and [4] of this Schedule) is replaced under new section 9A on an indexation day, then the replacement amount applies in relation to goods that are the subject of an import declaration communicated on or after that day; and
- where a dollar amount mentioned in table item 11 in subsection 9(1) of the Principal Regulation (as amended by item [11] of this Schedule) is replaced under new section 9A on an indexation day, then the replacement amount applies in relation to

each month, or part of a month, that begins on or after that day. This is subject to new subsection 9A(8).

New subsection 9A(8) applies where a dollar amount mentioned in table items 4 to 11 in subsection 9(1) of the Principal Regulation (as amended by items [6] to [11] of this Schedule) is replaced under new section 9A on an indexation day. In such circumstances, the old charge applies instead of the replacement amount in relation to a biosecurity matter that is carried out on or after the indexation day, provided that:

- an invoice was issued by the Agriculture Department in relation to the biosecurity matter before that day; or
- demand for payment had been made in relation to the biosecurity matter before that day.

New subsection 9A(9) provides for the following definitions of terms used in new section 9A:

- **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.

Item [18] – Subsections 10(3), (4), (5) and (6)

Section 10 of the Principal Regulation is made for the purposes of section 10 of the Act and provides for exemptions from prescribed charges.

Subsection 10(3) provides for an exemption from the prescribed charge in relation to an application for a permit. Subsections 10(4) and (5) provides for exemptions from the prescribed charge in relation to the mooring of certain vessels in Australian territory. Subsection 10(6) provides for an exemption from the prescribed charge in relation to an application for the approval of a proposed arrangement.

This item omits the words “section 9” and substitutes “subsection 9(1)” in subsections 10(3), (4), (5) and (6) of the Principal Regulation.

The amendments are consequential to the insertion of new subsection 9(1), made by item [2] of this Schedule.

Items [19] to [21] – Subsection 10(7) (heading), subsection 10(7), paragraphs 10(7)(c) and (d)

Section 10 of the Principal Regulation is made for the purposes of section 10 of the Act and provides for exemptions from prescribed charges. Subsection 10(7) currently provides for exemptions from the prescribed charge in relation to an approved arrangement, where any of the following charges have been paid for a financial year, or part of a financial year:

- the charge prescribed by table item 13 in section 9 of the Principal Regulation, in relation to another approved arrangement;

- the charge prescribed by table item 13 in section 9 of the *Biosecurity Charges Imposition (General) Regulation 2016* (the General Regulation), in relation to another approved arrangement;
- the charge prescribed by table item 2 in section 6 of the *Imported Food Charges (Imposition—Customs) Regulation 2015* (the Imported Food Customs Regulation);
- the charge prescribed by table item 2 in section 6 of the *Imported Food Charges (Imposition—General) Regulation 2015* (the Imported Food General Regulation).

Item [19] omits the word “management” and substitutes “administration” in the heading of subsection 10(7) of the Principal Regulation. This amendment is consequential to new table item 13 in subsection 9(1) of the Principal Regulation, as amended by item [13] of this Schedule.

Item [20] omits the words “section 9” and substitutes “subsection 9(1)”, wherever the words “section 9” occur in subsection 10(7) of the Principal Regulation.

Item [21] omits the words “section 6” and substitutes “subsection 6(1)” in paragraphs 10(7)(c) and (d) of the Principal Regulation.

The amendments are consequential to:

- the insertion of new subsection 9(1) of the Principal Regulation, made by item [2] of this Schedule;
- the amendment of subsection 9(1) of the General Regulation, made by the *Biosecurity Charges Imposition (General) Amendment (2023 Measures No. 1) Regulations 2023*;
- the amendment of subsection 6(1) of the Imported Food Customs Regulation, made by the *Imported Food Charges (Imposition—Customs) Amendment (2023 Measures No. 1) Regulations 2023*; and
- the amendment of subsection 6(1) of the Imported Food General Regulation, made by the *Imported Food Charges (Imposition—General) Amendment (2023 Measures No. 1) Regulations 2023*.

Item [22] – Subsections 10(8)

Section 10 of the Principal Regulation is made for the purposes of section 10 of the Act and provides for exemptions from prescribed charges. Subsection 10(8) provides for an exemption from the prescribed charge in relation to the entry of information into the automated entry processing system.

This item omits the words “section 9” and substitutes “subsection 9(1)” wherever the words “section 9” occur in subsection 10(8) of the Principal Regulation.

The amendments are consequential to the insertion of new subsection 9(1), made by item [2] of this Schedule.

Item [23] – At the end of Part 3

Part 3 of the Principal Regulation provides for application, saving and transitional provisions.

This item adds new section 12 in Part 3 of the Principal Regulation. New section 12 provides for the application of the amendments made by the Amendment Regulations.

New subsection 12(1) provides that the amendments made by items [3] and [4] of this Schedule applies in relation to goods that are the subject of an import declaration communicated on or after 1 July 2023. This amendment ensures that the new charges in new table items 1 and 2 in subsection 9(1) of the Principal Regulation apply prospectively.

New subsection 12(2) provides that the amendments made by item [6] of this Schedule apply in relation to a reservation or confirmation of a reservation of a place in a post-entry quarantine facility that is made before 1 July 2023, in certain circumstances. Such circumstances are where all of the following apply:

- the reservation or confirmation of the reservation was made in relation to an animal or consignment that is to enter the facility on or after 1 July 2023;
- the amount (the **relevant amount**) that applied in relation to the animal or consignment, under existing table item 4, 5 or 6 in section 9 of the Principal Regulation, had not been paid before 1 July 2023;
- no invoice had been issued by the Agriculture Department in relation to the relevant amount before 1 July 2023;
- no demand for payment of the relevant amount had been made before 1 July 2023.

This amendment ensures that the new charges in new table items 4 to 6A in subsection 9(1) of the Principal Regulation only applies in relation to a reservation or confirmation of the reservation was made before 1 July 2023, in limited circumstances. To ensure appropriate cost recovery of regulatory functions, an animal or consignment that enters the post-entry quarantine facility on or after 1 July 2023 is subject to the new charges that apply on or after 1 July 2023. This amendment also recognises that where the existing charges were paid, or an invoice was issued, or a demand for payment was made, before 1 July 2023, then the new charges do not apply.

For example, if a person made a reservation on 1 June 2023, in relation to an animal that is to enter the post-entry quarantine facility on 15 July 2023, then new subsection 12(2) has the following effect, in respect of an existing charge in table item 4, 5 or 6 in section 9 of the Principal Regulation (the existing charge):

- if the existing charge was paid before 1 July 2023 – the person is not liable to pay the new charge;
- if an invoice was issued in relation to the existing charge before 1 July 2023 – the person is not liable to pay the new charge;
- if a demand for payment was made in relation to the existing charge before 1 July 2023 – the person is not liable to pay the new charge;
- if the existing charge was not paid, an invoice was not issued, and a demand for payment was not made before 1 July 2023 – the person is liable to pay the new charge on or after 1 July 2023.

New subsection 12(3) provides that the amendments made by item [11] of this Schedule applies in relation to each month, or part of a month, that begins on or after 1 July 2023. This is subject to new subsection 12(4). This amendment ensures that the new charge in new table item 11 in subsection 9(1) of the Principal Regulation applies prospectively.

For example, if a plant is in a post-entry quarantine facility during the period of 15 May 2023 to 8 August 2023 (inclusive), then new subsection 12(3) has the following effect in relation to

the existing charge in table item 11 in section 9 of the Principal Regulation (the existing charge):

- for the period of 15 May 2023 to 14 June 2023, the existing charge applies in relation to the month;
- for the period of 15 June 2023 to 14 July 2023, the existing charge applies in relation to the month;
- for the period of 15 July 2023 to 8 August 2023, the new charge applies in relation to the part of a month.

New subsection 12(4) provides that, despite the amendments made by this Schedule, existing table items 4 to 11 in section 9 of the Principal Regulation continues to apply in relation to a biosecurity matter that is carried out on or after 1 July 2023, provided that:

- an invoice was issued by the Agriculture Department in relation to the biosecurity matter before 1 July 2023; or
- demand for payment had been made in relation to the biosecurity matter before 1 July 2023.

This amendment ensures that where an invoice was issued, or a demand for payment was made, before 1 July 2023, then a person is only liable to pay the existing charges.

For example, if a biosecurity matter is to be carried out on 22 July 2023, then new subsection 12(4) has the following effect, in relation to an existing charge in table items 4 to 11 in section 9 of the Principal Regulation (the existing charge):

- if an invoice was issued in relation to the existing charge before 1 July 2023 – the person is not liable to pay the new charge;
- if a demand for payment was made in relation to the existing charge before 1 July 2023 – the person is not liable to pay the new charge;
- if an invoice was not issued, and a demand for payment was not made before 1 July 2023 – the person is liable to pay the new charge on or after 1 July 2023.

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 (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 purpose of the *Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) is to ensure more effective funding arrangements for certain matters connected with the administration of the *Biosecurity Act 2015* by amending charges to support the cost recovery of related regulatory functions.

The Amendment Regulations are made under the *Biosecurity Charges Imposition (Customs) Act 2015* (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 amend the *Biosecurity Charges Imposition (Customs) Regulation 2016* to implement amended charges from 1 July 2023, to reflect corresponding changes in the complexity, risk and effort associated with certain biosecurity matters. The Amendment Regulations also improve the effectiveness of the biosecurity charging framework by amending the composition of charges and introducing annual indexation of charges.

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**