

EXPLANATORY STATEMENT

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

Biosecurity Act 2015

Biosecurity Amendment (Fees) Regulations 2023

Legislative Authority

The *Biosecurity Act 2015* (the 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.

Section 645 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.

Section 592 of the Act provides that the regulations may prescribe fees that may be charged in relation to activities (fee-bearing activities) carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under 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 *Biosecurity Amendment (Fees) Regulation 2023* (the Amendment Regulations) is to ensure more effective funding arrangements for biosecurity matters by amending fees for fee-bearing activities provided under the Act and clarifying the time by which such fees become due and payable.

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

Background

The Department of Agriculture, Fisheries and Forestry (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 (General) Act 2015*, the *Biosecurity Charges Imposition (Customs) Act 2015* and the *Biosecurity Charges*

Imposition (Excise) Act 2015. These Acts provide the tax legislation framework necessary to support cost recovery charges. Specific charges and fees for biosecurity regulatory functions are prescribed in the Principal Regulations, the *Biosecurity Charges Imposition (General) Regulation 2016* (the General Regulation) and the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Customs 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 fees to be implemented from 1 July 2023.

The new fees 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 fees are no longer sufficient to recover the costs of Australia's regulatory effort in relation to managing biosecurity risks. Biosecurity cost recovery arrangements were last comprehensively reviewed in 2015. Apart from minor price changes in 2018, 2020 and 2023, biosecurity fees and 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 fees with the actual cost of delivering these regulatory activities. This is crucial to strengthening Australia's biosecurity system and supporting operational needs.

The new fees 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 fee-bearing activities.

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/ 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 Amendment (Fees) Regulations 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity Amendment (Fees) Regulations 2023* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

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 clarifies 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 Act 2015*.

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 Regulation 2016* (the Principal Regulation).

Schedule 1 – Amendments

Biosecurity Regulation 2016

Subsection 592(1) of the Act provides that the regulations may prescribe fees that may be charged in relation to activities carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under the Act. Under subsection 592(2), the regulations may specify that the amount of a fee is the cost incurred by the Commonwealth in arranging and paying for another person to carry out the relevant fee-bearing activity. Subsection 592(3) provides that the regulations may also prescribe rules relating to deposits to be paid in relation to fee-bearing activities, and rules relating to fees to be paid in relation to specified applications.

Paragraph 593(a) of the Act provides that the regulations may prescribe the time when a specified cost-recovery charge is due and payable, and paragraph 593(b) provides that the regulations may prescribe one or more persons who are liable to pay a specified cost-recovery charge. In addition, paragraph 593(c) provides that the regulations may prescribe rules relating to the liability of a person's agent to pay cost-recovery charges on behalf of the person and the recovery of such cost-recovery charges from the person by the agent.

If the regulations specify the time when a cost-recovery charge is due and payable, then section 595 of the Act allows for the regulations to also specify a late payment fee that is due and payable if a basic charge is not paid at or before the time.

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

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

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

The new definition of *in-office activity* means a fee-bearing activity that is carried out:

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

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

The amount of the “in-office activity” fee varies depending on the kind of fee-bearing activity set out in subsection 106(1) of the Principal Regulation (as amended by items [3] to [23] of this Schedule). The amount of the “in-office activity” fee is generally lower than the corresponding “out-of-office activity” fee (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 activity*)

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

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

The new definition of *out-of-office activity* means a fee-bearing activity that is not carried out:

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

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

The amount of the “out-of-office activity” fee varies depending on the kind of fee-bearing activity set out in subsection 106(1) of the Principal Regulation (as amended by items [3] to [23] of this Schedule). The amount of the “out-of-office activity” fee is generally higher than the corresponding “in-office activity” fee (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] – Subsection 106(1) (table item 1)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

This item repeals and substitutes table item 1 in subsection 106(1) of the Principal Regulation.

New table item 1 provides the quarter hourly fee that applies for each person carrying out certain in-office activities that are provided during ordinary hours of duty. These activities include:

- inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (other than an activity referred to in another item of the table);
- assessing a proposed arrangement under section 406 of the Act.

The quarter hourly fee is \$37 for each person carrying out the activity.

Under section 5 of the Principal Regulation:

- “ordinary hours of duty” means the period that begins at 6.30 am and ends at 6.30 pm on a weekday;
- “weekday”, for the carrying out of a fee-bearing activity, means a Monday, Tuesday, Wednesday, Thursday or Friday that is not a Departmental holiday in the place where the activity is carried out;
- “Departmental holiday”, in relation to the carrying out of a fee-bearing activity, means a Monday, Tuesday, Wednesday, Thursday or Friday that is observed as a public holiday in the place where the activity is carried out.

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

Section 406 of the Act relates to the approval or refusal to approve 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.

Item [4] – Subsection 106(1) (cell at table item 2, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 2 provides the fee that applies for each person carrying out certain in-office activities that are provided on a weekday outside ordinary hours of duty. Such activities are those referred to in new table item 1 in subsection 106(1) (as amended by item [3] of this Schedule), and include:

- inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (other than an activity referred to in another item of the table);
- assessing a proposed arrangement under section 406 of the Act.

This item repeals and substitutes the cell in column 2 of table item 2 in subsection 106(1) of the Principal Regulation. The relevant fee differs depending on the circumstances in which the in-office activity is carried out.

If the activity is carried out immediately before or immediately after an in-office activity carried out by a person during ordinary hours of duty, then there is a quarter hourly fee of \$55

(base fee) for each person carrying out the activity. In any other case, the relevant fee for each person carrying out the activity is twice the dollar amount of the base fee (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 Regulation, as amended by item [1] of this Schedule, provides definitions for “Departmental holiday”, “in-office activity”, “ordinary hours of duty” and “weekday”.

Section 406 of the Act relates to the approval or refusal to approve 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.

Item [5] – Subsection 106(1) (cell at table item 3, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 3 provides the fee that applies for each person carrying out certain in-office activities that are provided on a Saturday, Sunday or a Departmental holiday. Such activities are those referred to in new table item 1 in subsection 106(1) (as amended by item [3] of this Schedule), and include:

- inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (other than an activity referred to in another item of the table);
- assessing a proposed arrangement under section 406 of the Act.

This item repeals and substitutes the cell in column 2 of table item 3 in subsection 106(1) of the Principal Regulation. The base fee is \$60. The relevant fee for each person carrying out the activity is twice the dollar amount of the base fee (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 Regulation, as amended by item [1] of this Schedule, provides definitions for “Departmental holiday” and “in-office activity”.

Section 406 of the Act relates to the approval or refusal to approve 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.

Item [6] – Subsection 106(1) (table item 4, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 4 provides the fee that applies for the assessment of a category 1 permit application. The fee applies for each application.

This item omits and substitutes the fee described in column 2 of table item 4 in subsection 106(1) of the Principal Regulation. The fee is increased from \$60 to \$74 for each application.

Under section 5 of the Principal Regulation:

- “category 1 permit application” means an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take no longer than 30 minutes to assess;
- “import permit” means a permit granted under section 179 of the Act that authorises a person to bring or import particular goods into Australian territory.

Item [7] – Subsection 106(1) (table item 5, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 5 provides the fee that applies for the assessment of a category 2 permit application. The fee applies for each application.

This item omits and substitutes the fee described in column 2 of table item 5 in subsection 106(1) of the Principal Regulation. The fee is increased from \$120 to \$148 for each application.

As mentioned above, “import permit” is defined in section 5 of the Principal Regulation. Section 5 also provides for the definition of “category 2 permit application”, which is an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take more than 30 minutes but no longer than 1 hour to assess.

Item [8] – Subsection 106(1) (table item 6, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 6 provides the fee that applies for the assessment of a category 3 permit application. The fee applies for each application.

This item omits and substitutes the fee described in column 2 of table item 6 in subsection 106(1) of the Principal Regulation. The fee is increased from \$240 to \$296 for each application.

As mentioned above, “import permit” is defined in section 5 of the Principal Regulation. Section 5 also provides for the definition of “category 3 permit application”, which is an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take more than 1 hour but no longer than 2 hours to assess.

Item [9] – Subsection 106(1) (table item 7, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 7 provides the fee that applies for the assessment of a category 4 permit application. The fee applies for each application.

This item omits and substitutes the fee described in column 2 of table item 7 in subsection 106(1) of the Principal Regulation. The fee is increased from \$360 to \$444 for each application.

As mentioned above, “import permit” is defined in section 5 of the Principal Regulation. Section 5 also provides for the definition of “category 4 permit application”, which is an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take more than 2 hours but no longer than 3 hours to assess.

Item [10] – Subsection 106(1) (table item 8, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 8 provides the fee that applies for the assessment of a category 5 permit application. The fee applies for each application.

This item omits and substitutes the fee described in column 2 of table item 8 in subsection 106(1) of the Principal Regulation. The fee is increased from \$480 to \$592 for each application.

As mentioned above, “import permit” is defined in section 5 of the Principal Regulation. Section 5 also provides for the definition of “category 5 permit application”, which is an application for the grant or variation of an import permit, or the variation of a condition of an import permit, that the Director of Biosecurity expects will take longer than 3 hours to assess.

Item [11] – Subsection 106(1) (table item 9, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 9 provides the quarter hourly fee that applies for the assessment of a permit application referred to in any of table items 4 to 8 that is not completed within the initial assessment period for the application. The fee applies for each application.

This item omits and substitutes the fee described in column 2 of table item 9 in subsection 106(1) of the Principal Regulation. The quarter hourly fee is increased from \$30 to \$37 for each application.

The “initial assessment period” is defined in section 5 of the Principal Regulation to mean:

- for a category 1 permit application, a period of 30 minutes; or
- for a category 2 permit application, a period of 1 hour; or
- for a category 3 permit application, a period of 2 hours; or
- for a category 4 permit application, a period of 3 hours; or
- for a category 5 permit application, a period of 4 hours.

As mentioned above, section 5 of the Principal Regulation also provides definitions for “category 1 permit application”, “category 2 permit application”, “category 3 permit application”, “category 4 permit application” and “category 5 permit application”.

Item [12] – Subsection 106(1) (cell at table item 10, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 10 provides the fee that applies for the assessment of a permit application referred to in any of table items 4 to 8, where that assessment is provided on a weekday outside ordinary hours of duty.

This item repeals and substitutes the cell in column 2 of table item 10 in subsection 106(1) of the Principal Regulation. The relevant fee differs depending on the circumstances in which the assessment is provided.

If the assessment is provided immediately before or immediately after ordinary hours of duty, then there is a quarter hourly fee of \$18 (base fee) for each application. In any other case, the relevant fee for each application is twice the dollar amount of the base fee (for the first half hour), plus \$18 for each quarter hour (or part thereof) after the first half hour. This fee is in addition to the initial assessment fee for the application and any fee that applies to the application under table item 9 in subsection 106(1) of the Principal Regulation.

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

Section 5 of the Principal Regulation also defines “initial assessment fee” to mean the following:

- for a category 1 permit application, the fee referred to in column 2 of table item 4 in subsection 106(1) of the Principal Regulation (as amended by item [7] of this Schedule);
- for a category 2 permit application, the fee referred to in column 2 of table item 5 in subsection 106(1) of the Principal Regulation (as amended by item [8] of this Schedule);
- for a category 3 permit application, the fee referred to in column 2 of table item 6 in subsection 106(1) of the Principal Regulation (as amended by item [9] of this Schedule);
- for a category 4 permit application, the fee referred to in column 2 of table item 7 in subsection 106(1) of the Principal Regulation (as amended by item [10] of this Schedule);
- for a category 5 permit application, the fee referred to in column 2 of table item 8 in subsection 106(1) of the Principal Regulation (as amended by item [11] of this Schedule).

Item [13] – Subsection 106(1) (cell at table item 11, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 11 provides the fee that applies for the assessment of a permit application referred to in any of table items 4 to 8, where that assessment is provided on a Saturday, Sunday or a Departmental holiday.

This item repeals and substitutes the cell in column 2 of table item 11 in subsection 106(1) of the Principal Regulation. The base fee is \$23. The relevant fee for each application is twice the dollar amount of the base fee (for the first half hour), plus \$23 for each quarter hour (or part thereof) after the first half hour. This fee is in addition to the initial assessment fee for the application and any fee that applies to the application under table item 9 in subsection 106(1) of the Principal Regulation.

As mentioned above, section 5 of the Principal Regulation provides the definitions for “Departmental holiday” and “initial assessment fee”.

Item [14] – Subsection 106(1) (table item 12)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the

fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

This item repeals and substitutes table item 12 in subsection 106(1) of the Principal Regulation.

New table item 12 provides the fee that applies for each person carrying out certain out-of-office activities that are provided during ordinary hours of duty. These activities include:

- inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (other than an activity referred to in another item in this table);
- assessing a proposed arrangement under section 406 of the Act.

If the activity is carried out for a period of less than a working day, then there is a quarter hourly fee of \$62 for each person carrying out the activity. In any other case, the relevant fee for each person carrying out the activity is \$1,221 for each working day, plus \$62 for each additional quarter hour (or part thereof) on that day.

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

Section 5 of the Principal Regulation also defines “working day” for the carrying out of a fee-bearing activity, as a period of 7.5 hours during which a person carries out the activity within the ordinary hours of duty.

Section 406 of the Act relates to the approval or refusal to approve 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.

Item [15] – Subsection 106(1) (cell at table item 13, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 13 provides the fee that applies for each person carrying out certain out-of-office activities that are provided on a weekday outside ordinary hours of duty. Such activities are those referred to in new table item 12 in subsection 106(1) (as amended by item [14] of this Schedule), and include:

- inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (other than an activity referred to in another item in this table);
- assessing a proposed arrangement under section 406 of the Act.

This item repeals and substitutes the cell in column 2 of table item 13 in subsection 106(1) of the Principal Regulation. The relevant fee differs depending on the circumstances in which the out-of-office activity is carried out.

If the activity is carried out immediately before or immediately after an out-of-office activity carried out by a person during ordinary hours of duty, then there is a quarter hourly fee of \$80 (base fee) for each person carrying out the activity. In any other case, the relevant fee for each person carrying out the activity is twice the dollar amount of the base fee (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 Regulation, as amended by item [2] of this Schedule, provides definitions for “Departmental holiday”, “ordinary hours of duty”, “out-of-office activity” and “weekday”.

Section 406 of the Act relates to the approval or refusal to approve 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.

Item [16] – Subsection 106(1) (cell at table item 14, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 14 provides the fee that applies for each person carrying out certain out-of-office activities that are provided on a Saturday, Sunday or a Departmental holiday. Such activities are those referred to in new table item 12 in subsection 106(1) (as amended by item [14] of this Schedule), and include:

- inspection, examination, assessment, analysis, diagnostic activity, clearance, treatment, audit, supervision, training, and any other activity carried out in relation to goods or a conveyance (other than an activity referred to in another item of the table);
- assessing a proposed arrangement under section 406 of the Act.

This item repeals and substitutes the cell in column 2 of table item 14 in subsection 106(1) of the Principal Regulation. The base fee is \$85. The relevant fee for each person carrying out the activity is twice the dollar amount of the base fee (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 Regulation, as amended by item [2] of this Schedule, provides definitions for “Departmental holiday” and “out-of-office activity”.

Section 406 of the Act relates to the approval or refusal to approve 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.

Item [17] – Subsection 106(1) (table items 16 and 17)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

This item repeals current table items 16 and 17, and substitutes new table items 16, 16A and 17 in subsection 106(1) of the Principal Regulation.

New table item 16 provides for the fee that applies for husbandry activities in relation to a horse in a post-entry quarantine facility, for each day after the initial 14-day period during which the horse stayed at the post-entry quarantine facility. The fee is \$44 for each animal for each day.

New table item 16A provides for the fee that applies for husbandry activities in relation to a ruminant in a post-entry quarantine facility. The fee is \$101 for each animal for each day.

New table item 17 provides for the fee that applies for husbandry activities in relation to an animal not covered by another item of this table, where the animal is in a post-entry quarantine facility. The fee is \$50 for each animal for each day.

Under section 5 of the Principal Regulation, “husbandry activities”, in relation to an animal, eggs or a plant that is in a post-entry quarantine facility, means activities relating to the care and maintenance of the animal, eggs, or plant (for example, transport, housing, daily monitoring, feeding, cleaning of facilities and administration of medication).

“Post-entry quarantine facility” is defined in section 5 of the Principal Regulation as a facility operated by, or on behalf of, the Commonwealth for the purpose of assessing and managing biosecurity risks associated with goods.

Item [18] – Subsection 106(1) (table item 18, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 18 provides the fee that applies for husbandry activities (including entomological testing) in relation to a consignment of bees in a post-entry quarantine facility.

This item repeals and substitutes the fee described in column 2 of table item 18 in subsection 106(1) of the Principal Regulation. The fee is increased from \$280 to \$469 for each consignment for each month or part of a month.

As mentioned above, section 5 of the Principal Regulation provides the definitions for “husbandry activities” and “post-entry quarantine facility”. Section 5 of the Principal Regulation also defines a “bee” to mean an insect of the family Apoidea.

Section 105 of the Principal Regulation outlines the circumstances in which one or more animals or eggs are taken to be a “consignment”.

Item [19] – Subsection 106(1) (table item 19, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 19 provides the fee that applies for husbandry activities in relation to a consignment of birds in a post-entry quarantine facility.

This item repeals and substitutes the fee described in column 2 of table item 19 in subsection 106(1) of the Principal Regulation. The fee is decreased from \$150 to \$57 for each consignment for each day.

As mentioned above, section 5 of the Principal Regulation provides the definitions for “husbandry activities” and “post-entry quarantine facility”, while section 105 of the Principal Regulation provides the meaning of a “consignment”. Section 5 of the Principal Regulation also provides that “bird” does not include a chick that hatches while the egg is in a post-entry quarantine facility.

Item [20] – Subsection 106(1) (table item 20, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 20 provides the fee that applies for husbandry activities in relation to a consignment of birds’ eggs for hatching in a post-entry quarantine facility.

This item repeals and substitutes the fee described in column 2 of table item 20 in subsection 106(1) of the Principal Regulation. The fee is decreased from \$200 to \$76 for each consignment for each day.

As mentioned above, section 5 of the Principal Regulation provides the definitions for “husbandry activities” and “post-entry quarantine facility”, while section 105 of the Principal Regulation provides the meaning of a “consignment”.

Item [21] – Subsection 106(1) (table item 21, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the

fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 21 provides the fee that applies for husbandry activities in relation to a plant, or plants, in a post-entry quarantine facility.

This item repeals and substitutes the fee described in column 2 of table item 21 in subsection 106(1) of the Principal Regulation. The fee is increased from \$20 to \$60 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, section 5 of the Principal Regulation provides the definitions for “husbandry activities” and “post-entry quarantine facility”, while section 105 of the Principal Regulation provides the meaning of a “consignment”.

Item [22] – Subsection 106(1) (table item 22)

Table item 22 in subsection 106(1) of the Principal Regulation currently provides a fee that applies for a house at the post-entry quarantine facility on Torrens Island for accommodation (excluding cleaning of the house) for persons who bring or import animals into Australian territory.

This item repeals table item 22 in subsection 106(1). This removes a redundant fee, as the post-entry quarantine facility on Torrens Island is no longer operational.

Item [23] – Subsection 106(1) (table item 23, column 2)

Subsection 106(1) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act and provides for fees that may be charged in relation to fee-bearing activities. The fees are listed in the table in subsection 106(1), where column 1 of the table describes the fee-bearing activity and column 2 describes the corresponding fees that apply for that type of activity.

Table item 21 provides the fee that applies for the temporary storage, at premises owned or managed by the Commonwealth, of baggage brought into Australian territory that is suspected of posing an unacceptably high level of biosecurity risk.

This item repeals and substitutes the fee described in column 2 of table item 21 in subsection 106(1) of the Principal Regulation. The fee is increased from \$30 to \$45 for each piece of baggage, for each 30-day period or part thereof.

Item [24] – After subsection 106(1)

This item inserts new subsections 106(1A) and (1B) in the Principal Regulation.

New subsection 106(1A) applies where an amount of a fee specified in paragraph (a) of table item 2, 10 or 13 in subsection 106(1) of the Principal Regulation (as amended by items [4], [12] and [15] of this Schedule) is increased under new section 107A (as amended by item [27] of this Schedule). In such circumstances, this increased fee is used for the purposes

of working out the amount of the fee under subparagraph (b)(i) of the corresponding table item.

New subsection 106(1B) applies where an amount of a fee specified in paragraph (b) of table item 3, 11 or 14 in subsection 106(1) of the Principal Regulation (as amended by items [5], [13] and [16] of this Schedule) is increased under new section 107A (as amended by item [27] of this Schedule). In such circumstances, this increased fee is used for the purposes of working out the amount of the fee under paragraph (a) of the corresponding table item.

This amendment clarifies that the indexation of fees under new section 107A also affects the calculation of the amount of the fee under subparagraph (b)(i) of table item 2, 10 or 13, or paragraph (a) of table item 3, 11 or 14, in subsection 106(1) of the Principal Regulation.

Items [25] and [26] – Paragraphs 106A(3)(a) and (b)

Section 106A of the Principal Regulation applies in relation to certain fee-bearing activities that are carried out, at the request of a person. Such fee-bearing activities are carried out in a special processing area of a landing place or port, and in relation to one or more international travellers arriving at the landing place or port and their baggage.

Subsection 106A(2) of the Principal Regulation is made for the purposes of subsection 592(1) of the Act, and provides that the person may be charged an agreed fee in respect of such fee-bearing activities. Subsection 106A(3) provides for the amount of the agreed fee.

Item [25] omits the words “\$420 but not more than \$840” and substitutes “\$516 but not more than \$1,032” in paragraph 106(3)(a) of the Principal Regulation.

Item [26] omits the words “\$35 but not more than \$70” and substitutes “\$43 but not more than \$86” in paragraph 106(3)(b) of the Principal Regulation.

The amendments have the effect that the amount of the agreed fee is the total of two component fees. The first component fee is an amount between \$516 to \$1,032 for each person carrying out the fee-bearing activities, for any period up to 3 hours during which one or more fee-bearing activities are carried out. The second component fee applies to a period of time immediately following the first 3 hours during which the fee-bearing activities are carried out. This is an amount between \$43 to \$86 for each person carrying out the fee-bearing activities, for each additional quarter hour (or part thereof).

Item [27] – At the end of Division 1 of Part 2 of Chapter 9

This item adds new section 107A in the Principal Regulation. New section 107A provides for the indexation of fees.

New subsection 107A(1) applies where the indexation factor for an indexation day is greater than 1. Where this occurs, the dollar amounts mentioned in table items 1 to 23 in subsection 106(1) of the Principal Regulation (as amended by items [3] to [23] of this Schedule) and paragraphs 106A(3)(a) and (b) of the Principal Regulation (as amended by items [25] to [26] of this Schedule) are replaced by the amount worked out using the formula in new subsection 107A(1). The formula requires the dollar amount of the fee immediately before the indexation day to be multiplied by the indexation factor for the indexation day.

Under new subsection 107A(2), the amount worked out under new subsection 107A(1) is rounded to the nearest whole dollar, and by rounding 50 cents upwards.

New subsection 107A(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 107A(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 107A(5) requires the amounts to be worked out under new section 107A 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 107A(6) and (7) provide for the application of the replacement amount, in the following manner:

- where a dollar amount mentioned in table item 18 or 21 in subsection 106(1) of the Principal Regulation (as amended by items [18] and [21] of this Schedule) is replaced under new section 107A on an indexation day, then the replacement amount applies in relation to each month, or part of a month, that begins on or after the indexation day. This is subject to new subsection 107A(8);
- where a dollar amount mentioned in table item 23 in subsection 106(1) of the Principal Regulation (as amended by item [23] of this Schedule) is replaced under new section 107A on an indexation day, then the replacement amount applies in relation to each 30-day period, or part of a 30-day period, that begins on or after the indexation day.

New subsection 107A(8) applies where a dollar amount mentioned in table items 1 to 14 and 16 to 21 in subsection 106(1) of the Principal Regulation (as amended by items [3] to [21] of this Schedule) is replaced under new section 107A on an indexation day. In such circumstances, the old fee applies instead of the replacement amount in relation to a fee-bearing activity that is carried out on or after the indexation day, provided that:

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

New subsection 107A(9) provides that, where a dollar amount mentioned in paragraph 106A(3)(a) or (b) of the Principal Regulation (as amended by items [25] to [26] of this Schedule) is replaced under new section 107A on an indexation day, then the replacement amount applies in relation to any request made by a person on or after the indexation day.

New subsection 107A(10) provides for the following definitions of terms used in new section 107A:

- **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 [28] – Paragraphs 108(2)(a) and (b)

Section 108 of the Principal Regulation is made for the purposes of paragraph 593(a) of the Act and prescribes the time when certain cost-recovery charges are due and payable.

This item repeals and substitutes paragraphs 108(2)(a) and (b) of the Principal Regulation.

This amendment has the effect that a fee prescribed in relation to an activity referred to in table items 1 to 24 in subsection 106(1) is due and payable at certain times. If the Agriculture Department issues an invoice in relation to the fee that specifies the last day for payment of the fee, then the fee is due and payable by close of business on the last day specified in the invoice. In any other case, the fee is due and payable when a demand for payment of the fee is made.

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

Item [29] – Subsection 108(4A)

Section 108 of the Principal Regulation is made for the purposes of paragraph 593(a) of the Act and prescribes the time when certain cost-recovery charges are due and payable. Subsection 108(4A) provides for when a charge is due and payable, in circumstances where a trusted trader agreement (within the meaning of the *Customs Act 1901*) is in force, and not suspended, between the Comptroller-General of Customs and the entity.

This item omits the words “section 9” and substitutes “subsection 9(1)”, wherever the words “section 9” occur in subsection 108(4A) of the Principal Regulation.

The amendments are consequential to:

- the amendment of subsection 9(1) of the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Customs Regulation), made by the *Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1) Regulations 2023*; and
- the amendment of subsection 9(1) of the *Biosecurity Charges Imposition (General) Regulation 2016* (the General Regulation), made by the *Biosecurity Charges Imposition (General) Amendment (2023 Measures No. 1) Regulations 2023*.

Item [30] – Subsection 108(5)

Section 108 of the Principal Regulation is made for the purposes of paragraph 593(a) of the Act and prescribes the time when certain cost-recovery charges are due and payable.

This item repeals and substitutes subsection 108(5) of the Principal Regulation, not including the note in subsection 108(5).

This amendment applies to a charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2015* or the *Biosecurity Charges Imposition (General) Act 2015*, other than a charge covered by subsection 108(4A) of the Principal Regulation (as amended by item [29] of this Schedule). Such a charge is due and payable at certain times.

If the Agriculture 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 Agriculture 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.

Item [31] – Subsection 109(4)

Section 109 of the Principal Regulation is made for the purposes of paragraph 593(b) of the Act and prescribes the persons who are liable to pay the cost-recovery charges referred to in section 108. Subsection 109(4) provides for the persons who are liable to pay certain charges prescribed by the Customs Regulation and General Regulation.

This item omits the words “section 9” and substitutes “subsection 9(1)”, wherever the words “section 9” occur in subsection 109(4) of the Principal Regulation.

The amendments are consequential to:

- the amendment of subsection 9(1) of the Customs Regulation, made by the *Biosecurity Charges Imposition (Customs) Amendment (2023 Measures No. 1) Regulations 2023*; and
- the amendment of subsection 9(1) of the General Regulation, made by the *Biosecurity Charges Imposition (General) Amendment (2023 Measures No. 1) Regulations 2023*.

Item [32] – In the appropriate position in Chapter 10

Chapter 10 of the Principal Regulation provides for transitional matters.

This item inserts new section 124 in Chapter 10 of the Principal Regulation. New section 124 provides for transitional matters in relation to amendments made by the Amendment Regulations.

New subsection 124(1) provides that the amendments made by items [18] and [21] of this Schedule apply in relation to each month, or part of a month, that begins on or after 1 July 2023. This is subject to new subsection 124(3). This amendment ensures that the new fee in new table items 18 and 21 in subsection 106(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 124(1) has the following effect in relation to the existing fee in table item 21 in subsection 106(1) of the Principal Regulation (the existing fee):

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

New subsection 124(2) provides that the amendments made by item [23] of this Schedule apply in relation to each 30-day period, or part of a 30-day period, that begins on or after 1 July 2023. This amendment ensures that the new fee in new table item 23 in subsection 106(1) of the Principal Regulation applies prospectively.

For example, if a piece of luggage is stored at premises owned or managed by the Commonwealth during the period of 22 May 2023 to 15 August 2023 (inclusive), then new subsection 124(2) has the following effect in relation to the existing fee in table item 23 in subsection 106(1) of the Principal Regulation (the existing fee):

- for the period of 22 May 2023 to 20 June 2023, the existing fee applies in relation to the 30-day period;
- for the period of 21 June 2023 to 20 July 2023, the existing fee applies in relation to the 30-day period;
- for the period of 21 July 2023 to 8 August 2023, the new fee applies in relation to the part of a 30-day period.

New subsection 124(3) provides that, despite the amendments in this Schedule, existing table items 1 to 14 and 16 to 21 in subsection 106(1) of the Principal Regulation continue to apply in relation to a fee-bearing activity that is carried out on or after 1 July 2023, provided that:

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

For example, if a fee-bearing activity is to be carried out on 22 July 2023, then new subsection 124(3) has the following effect, in relation to an existing fee in table items 1 to 14 and 16 to 21 in subsection 106(1) of the Principal Regulation (the existing fee):

- if an invoice was issued in relation to the existing fee before 1 July 2023 – the person is not liable to pay the new fee;
- if a demand for payment was made in relation to the existing fee before 1 July 2023 – the person is not liable to pay the new fee;
- 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 fee 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 Amendment (Fees) 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 *Biosecurity Amendment (Fees) Regulations 2023* (the Amendment Regulations) amend the *Biosecurity Regulation 2016* to implement amended fees from 1 July 2023, to reflect changes in the complexity, risk and effort associated with certain fee-bearing activities. The amendments also improve the effectiveness of the biosecurity cost recovery framework by amending the composition of fees, introducing annual indexation of fees, making minor amendments to technical terms and clarifying the time by which fees become due and payable.

The Amendment Regulations are made under the *Biosecurity Act 2015*. The Act does not set the amounts of the fees and only authorises the imposition of fees prescribed in the regulations.

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**