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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

QUARANTINE CHARGES (IMPOSITION – GENERAL) BILL 2014

QUARANTINE CHARGES (IMPOSITION – CUSTOMS) BILL 2014

QUARANTINE CHARGES (IMPOSITION – EXCISE) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, the Hon. Barnaby Joyce MP)

QUARANTINE CHARGES (IMPOSITION – GENERAL) BILL 2014

QUARANTINE CHARGES (IMPOSITION – CUSTOMS) BILL 2014

QUARANTINE CHARGES (IMPOSITION – EXCISE) BILL 2014

General Outline

The three Bills (Quarantine Charges Bills) re-align Australia's biosecurity and quarantine imports system with an efficient and effective cost-recovery model which is consistent with the *Australian Government Cost Recovery Guidelines*. Authority to collect charges imposed under the Quarantine Charges Bills is provided by the Quarantine Charges (Collection) Bill 2014.

Biosecurity is currently managed under the *Quarantine Act 1908* and related delegated legislation. Biosecurity refers to the management of the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy. Shifting global demands, growing passenger and trade volumes, increasing imports from a growing number of countries and population expansion all contribute to the complexity of the modern biosecurity environment.

Historically, the Department of Agriculture's approach to biosecurity management—under the Quarantine Act—has relied on mandatory border intervention targets for specific imports. This approach did not take into account the varying levels of risk posed by different passengers, goods, import businesses or incursions, or where intervention would be most effective (offshore, onshore or at the border).

In recent years, the department has shifted to a risk-based approach to biosecurity management, informed by scientific analysis, intelligence and surveillance that enables higher risk goods, passengers and mail to be targeted for intervention. This has allowed the department to develop world's best biosecurity practice and better manage the increasing volumes of trade and passengers across the Australian border. The risk-based approach, allows the department to more effectively target its regulatory efforts without compromising biosecurity risk outcomes. It reduces the cost of delivering frontline services and saves time and money for importing businesses with flow-on benefits to the broader economy.

The risk-based approach reduces the administrative burden on compliant clients, enabling faster clearance at the border through better targeting and focus on higher risk goods. The risk-based approach allows the free movement of goods, where risk is low, and cuts the costs for clients who actively and conscientiously take account of biosecurity risks. While the department has adopted this operating model, cost-recovery arrangements under existing legislation have been unable to provide sufficient support.

The department currently recovers the costs of key biosecurity services (for example, scientific analysis, intelligence and surveillance, which are key elements of the risk-based approach) through three fee items (2, 3 and 5) of the *Quarantine Service Fees Determination 2005* (the Determination), made under section 86E of the Quarantine Act.

This legislative package will create a more appropriate legal structure for the recovery of costs associated with the indirect biosecurity services undertaken by the department, for the benefit of importers, and will align the cost-recovery arrangements with current departmental practices. The legislation will sit alongside the existing fee-for-service cost-recovery mechanism and support Australia's capacity to manage biosecurity risks into the future.

The *Australian Government Cost Recovery Guidelines* state that agencies should set charges to recover all the costs of products or services that they provide. These charges should reflect the costs of providing the service and should generally be imposed on a fee-for-service basis or, where efficient, as a levy.

The legislative package is designed purely as a cost-recovery mechanism. The legislation ensures that the Minister for Agriculture must be satisfied that the amount charged will be approximately equal to the cost of delivering the activity. The primary and delegated legislation have been drafted to take into account and be consistent with requirements under international trade law.

Quarantine Charges (Imposition-General) Bill 2014

The Quarantine Charges (Imposition-General) Bill 2014 enables cost-recovery of activities that provide benefits to users of the biosecurity system – particularly the recovery of costs for indirect biosecurity services, such as scientific analysis, intelligence and surveillance.

The Bill is enabling and mechanistic in character. It does not itself set the amount of the charges and will not impose any financial impacts on businesses. The Bill authorises the imposition of charges in relation to matters connected with the administration of the Quarantine Act. These matters will be prescribed in the delegated legislation and will reflect the indirect biosecurity services provided by the department. The amount of the cost-recovery charges and who is liable to pay them will also be set in delegated legislation. Setting the charges through delegated legislation will allow the Minister for Agriculture to make appropriate and timely adjustments to the charges, avoiding future over or under recoveries.

The Bill also includes a safeguard regarding the amounts of the charges that can be authorised by the Bill. Before the Governor-General makes a regulation to set the charges, the Minister for Agriculture 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. This will provide clients with confidence that the government will not over recover the costs of its indirect biosecurity services.

The Bill also validates the fees collected under the *Quarantine Service Fees Determination 2005* insofar as they may be deemed to be invalid.

Quarantine Charges (Imposition-Customs) Bill 2014

The Quarantine Charges (Imposition-Customs) Bill 2014 enables cost-recovery of activities that provide benefits to users of the biosecurity system – particularly the recovery of costs for indirect biosecurity services, such as scientific analysis,

intelligence and surveillance where a charge is considered a duty of customs as defined by section 55 of the Constitution.

The Bill is enabling and mechanistic in character. Its provisions mirror the Quarantine Charges (Imposition-General) Bill 2014 in operative function and effect.

Quarantine Charges (Imposition-Excise) Bill 2014

The Quarantine Charges (Imposition-Excise) Bill 2014 enables cost-recovery of activities that provide benefits to users of the biosecurity system – particularly the recovery of costs for indirect biosecurity services, such as scientific analysis, intelligence and surveillance where a charge is considered a duty of excise as defined by section 55 of the Constitution.

The Bill is enabling and mechanistic in character. Its provisions mirror the Quarantine Charges (Imposition-General) Bill 2014 in operative function and effect.

Financial Impact Statement

The Bills have no financial impact on the Commonwealth or industry. The Bills do not set the amount of the charges and will not impose any financial impacts on businesses.

The charges set in delegated legislation will be equal to three existing fees under the *Quarantine Services Fees Determination 2005*. These fees will in turn be removed from the Determination; this action in itself will not change the quantum of charge imposed on clients.

Statement of Compatibility with Human Rights

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

Quarantine Charges (Imposition–General) Bill 2014

This Bill 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 Bill

The Quarantine Charges (Imposition–General) Bill 2014 enables cost-recovery of activities that provide benefits to users of the biosecurity system – particularly the recovery of costs for surveillance, compliance, risk analysis and intelligence capabilities, which are key features of the risk-based approach.

The Bill is enabling and mechanistic in character. It does not itself set the amount of the charges and will not impose any financial impacts on businesses. The amount of the cost-recovery charges and who is liable to pay them will be set in regulation under the Bill.

The Bill will align the cost-recovery arrangements with current departmental practices. The legislation will complement the existing fee-for-service cost-recovery mechanism and support Australia’s capacity to manage biosecurity risks into the future.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not engage any human rights issues.

Minister for Agriculture

Statement of Compatibility with Human Rights

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

Quarantine Charges (Imposition–Customs) Bill 2014

This Bill 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 Bill

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The Bill is enabling and mechanistic in character. It does not itself set the amount of the charges (duties of customs) and will not impose any financial impacts on businesses. The amount of the cost-recovery charges and who is liable to pay them will be set in regulation under the Bill.

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Overview of the Bill

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The Bill is enabling and mechanistic in character. It does not itself set the amount of the charges (duties of excise) and will not impose any financial impacts on businesses. The amount of the cost-recovery charges and who is liable to pay them will be set in regulation under the Bill.

The Bill will align the cost-recovery arrangements with current departmental practices. The legislation will complement the existing fee-for-service cost-recovery mechanism and support Australia’s capacity to manage biosecurity risks into the future.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not engage any human rights issues.

Minister for Agriculture

Quarantine Charges (Imposition-General) Bill 2014

Part 1—Preliminary

Clause 1 Short title

This clause provides that the Bill, when enacted, may be cited as the *Quarantine Charges (Imposition-General) Act 2014*.

Clause 2 Commencement

This clause provides for the commencement of the Act. Each provision of the Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 in the table.

Clause 3 Act binds the Crown

This clause provides that the Act will bind the Crown in each of its capacities. This means that the Commonwealth and state and territory governments will be bound to comply with the provisions of the Act.

Clause 4 Extension to external Territories

This clause provides that the Act will extend to the territory of Christmas Island and the Cocos (Keeling) Islands. It also provides that the regulations to the Act may extend the Act or any of its provisions to any other external territory that is prescribed by the regulations.

This clause ensures that charges in relation to prescribed matters connected with the administration of the Quarantine Act can be imposed anywhere those services are provided including in the territory of Christmas Island and the Cocos (Keeling) Islands and any other external territory that is prescribed by the regulations.

Parliament will have the opportunity to scrutinise the extension of the Act to an external territory when the enabling regulations are tabled in each House of Parliament.

Clause 5 Extraterritorial application

This clause extends the operation of the Act beyond Australia's territorial jurisdiction, ensuring that charges in relation to prescribed matters connected with the administration of the Quarantine Act can be imposed on persons and organisations located overseas. This clause is necessary to impose charges on persons wishing to import goods into Australia who are located overseas.

This clause also defines 'Australian territory'. A reference to 'Australian territory' is a reference to Australia, Christmas Island, Cocos (Keeling) Islands (and any external Territory to which that provision extends) and the airspace over these areas. It also refers to the coastal sea.

Clause 6 Act does not impose tax on property of a State

This clause ensures that charges imposed under the Act are not taken to be imposed on property of any kind belonging to a State.

Should a question arise whether certain charges would amount to taxation imposed on property belonging to a state, subclause 6(2) clarifies that ‘property of any kind belonging to a State’ has the same meaning as in section 114 of the Constitution.

Nothing under this clause would prevent a state voluntarily paying charges imposed under this Act.

Part 2—Charges

Clause 7 Imposition of charges

This clause permits the Commonwealth to impose charges in relation to prescribed matters connected with the administration of the Quarantine Act. These matters will be prescribed in the delegated legislation and will reflect the indirect biosecurity services provided by the department, such as, but not limited to scientific analysis, intelligence and surveillance.

Charges imposed under the Act are imposed as taxes only for the purposes of cost recovery. Two or more charges may be prescribed in relation to the same matter or a single charge may cover two or more matters. This will provide the department with sufficient flexibility to ensure that any charges best reflect the indirect biosecurity services provided and allow the cost-recovery for such services to be appropriate in all circumstances.

Charges imposed under this Act are only valid insofar as the charge is neither a duty of customs or excise within the meaning of section 55 of the Constitution. This ensures that persons liable to pay a charge under the Act will not be liable to pay an additional charge for the provision of the same service or product under either the *Quarantine Charges (Imposition-Customs) Act 2014* or the *Quarantine Charges (Imposition-Excise) Act 2014*.

Clause 8 Matters relating to amount of charges

This clause allows for regulations to prescribe charges by specifying an amount as the charge or by specifying a method for calculating the amount of a charge.

Specifying the amount of a charge or the method for calculating the amount of a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the amount of a charge or the method for calculating the amount of a charge over time. This will allow charges imposed under the Act to be increased or decreased as operational practices evolve and technology develops. This will also help to avoid over or under recovery.

Subclause 8(2) provides that before the Governor-General makes a regulation under subclause 7(1) prescribing a charge in relation to a matter, the Minister must be satisfied that the amounts of charges are set at a level that is designed to recover no more than the likely cost to the Commonwealth in connection with the matter.

This ministerial oversight provides assurance to those liable to pay a charge or charges under the Act, that the amount charged reflects the likely costs to the

Commonwealth in connection with the matter. Any charges set out in the regulations will be consistent with the *Australian Government Cost Recovery Guidelines*.

Clause 9 Who is liable to pay charges

This clause allows the regulations to prescribe who is liable to pay a charge and that one or more persons may be liable to pay a particular charge or charges prescribed under the Act.

This will provide the department with sufficient flexibility to ensure that any charges best identify the recipient of the indirect biosecurity services provided and allow the cost-recovery for such services to be appropriate in all circumstances.

Specifying who is liable to pay a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the nature of the charge over time. This will allow charges imposed under the Act to be targeted at the appropriate recipient of the indirect biosecurity service as operational practices evolve. This will also ensure that the charges are consistent with the *Australian Government Cost Recovery Guidelines*.

Clause 10 Exemptions from charges

This clause allows for the regulations to provide for certain persons or activities to be exempt from a charge or charges under the Act.

Specifying who is exempt from a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the nature of the charge over time. This will provide the department with the ability to act in exceptional circumstances or where government policy requires that a class of persons be exempt from charges – for example, the diplomatic corps.

Part 3—Validation

Clause 11 Validation of fees charged under the *Quarantine Act 1908*

This clause provides that where a charge has been imposed under the Quarantine Act and it was done so in a manner that may be found to be invalid, the charge is validly imposed under this Act. This ensures that the government's intention to recover the costs of providing services is done so validly under law.

This clause also provides that the amount of the charge validly imposed under this Act will be equal to the amount purported to be imposed by the Quarantine Act in relation to the same matter. This ensures that no charge validly imposed under this Act is of greater or lower value than originally charged.

This clause further provides that the amount of the validly imposed charge may be reduced by an amount already paid or remitted. Where the charge has been paid in full, liability will be reduced to zero. This ensures that where an invalidly imposed charge has been paid the validly imposed charge is also taken to be paid. Where a person recovers from the Commonwealth an amount which has been invalidly charged, through a court or other means, the validly imposed charge is increased by that amount. This ensures that where a person recovers an invalidly imposed charge

from the Commonwealth, the recovered amount will be payable to the Commonwealth under a validly imposed charge.

This clause ensures that those liable to pay a charge or charges under the Act will not be liable to pay twice in relation to the same matter. Similarly, a charge under this Act is taken to have been imposed only so far as the charge would be neither a duty of customs nor a duty of excise within the meaning of section 55 of the Constitution.

Part 4—Miscellaneous

Clause 12 Regulations

This clause permits the Governor-General to make regulations to prescribe any matters necessary or convenient to carry out or give effect to the *Quarantine Charges (Imposition—General) Act 2014*.

Quarantine Charges (Imposition-Customs) Bill 2014

Part 1—Preliminary

Clause 1 Short title

This clause provides that the Bill, when enacted, may be cited as the *Quarantine Charges (Imposition-Customs) Act 2014*.

Clause 2 Commencement

This clause provides for the commencement of the Act. Each provision of the Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 in the table.

Clause 3 Act binds the Crown

This clause provides that the Act will bind the Crown in each of its capacities. This means that the Commonwealth and state and territory governments will be bound to comply with the provisions of the Act.

Clause 4 Extension to external Territories

This clause provides that the Act will extend to the territory of Christmas Island and the Cocos (Keeling) Islands. It also provides that the regulations to the Act may extend the Act or any of its provisions to any other external territory that is prescribed by the regulations.

This clause ensures that charges in relation to prescribed matters connected with the administration of the Quarantine Act can be imposed anywhere those services are provided including in the territory of Christmas Island and the Cocos (Keeling) Islands and any other external territory that is prescribed by the regulations.

Parliament will have the opportunity to scrutinise the extension of the Act to an external territory when the enabling regulations are tabled in each House of Parliament.

Clause 5 Extraterritorial application

This clause extends the operation of the Act beyond Australia's territorial jurisdiction, ensuring that charges in relation to prescribed matters connected with the administration of the Quarantine Act can be imposed on persons and organisations located overseas. This clause is necessary to impose charges on persons wishing to import goods into Australia who are located overseas.

Clause 6 Act does not impose tax on property of a State

This clause ensures that charges imposed under the Act are not taken to be imposed on property of any kind belonging to a State.

Should a question arise whether certain charges would amount to taxation imposed on property belonging to a state, subclause 6(2) clarifies that 'property of any kind belonging to a State' has the same meaning as in section 114 of the Constitution.

Nothing under this clause would prevent a state voluntarily paying charges imposed under this Act.

Part 2—Charges

Clause 7 Imposition of charges

This clause permits the Commonwealth to impose charges, as duties of customs, in relation to prescribed matters connected with the administration of the Quarantine Act. These matters will be prescribed in the delegated legislation and will reflect the indirect biosecurity services provided by the department, such as, but not limited to scientific analysis, intelligence and surveillance.

Charges imposed under the Act are imposed as taxes only for the purposes of cost recovery. Two or more charges may be prescribed in relation to the same matter or a single charge may cover two or more matters. This will provide the department with sufficient flexibility to ensure that any charges best reflect the indirect biosecurity services provided and allow the cost-recovery for such services to be appropriate in all circumstances.

Charges imposed under this Act are only valid insofar as the charge is a duty of customs within the meaning of section 55 of the Constitution. This ensures that persons liable to pay a charge under the Act will not be liable to pay an additional charge for the provision of the same service or product under either the *Quarantine Charges (Imposition-Excise) Act 2014* or the *Quarantine Charges (Imposition-General) Act 2014*.

Clause 8 Matters relating to amount of charges

This clause allows for regulations to prescribe charges by specifying an amount as the charge or by specifying a method for calculating the amount of a charge.

Specifying the amount of a charge or the method for calculating the amount of a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the amount of a charge or the method for calculating the amount of a charge over time. This will allow charges imposed under the Act to be increased or decreased as operational practices evolve and technology develops. This will also help to avoid over or under recovery.

Subclause 8(2) provides that before the Governor-General makes a regulation under subclause 7(1) prescribing a charge in relation to a matter, the Minister must be satisfied that the amounts of charges are set at a level that is designed to recover no more than the likely cost to the Commonwealth in connection with the matter.

This ministerial oversight provides assurance to those liable to pay a charge or charges under the Act, that the amount charged reflects the likely costs to the Commonwealth in connection with the matter. Any charges set out in the regulations will be consistent with the *Australian Government Cost Recovery Guidelines*.

Clause 9 Who is liable to pay charges

This clause allows the regulations to prescribe who is liable to pay a charge and that one or more persons may be liable to pay a particular charge or charges prescribed under the Act.

This will provide the department with sufficient flexibility to ensure that any charges best identify the recipient of the indirect biosecurity services provided and allow the cost-recovery for such services to be appropriate in all circumstances.

Specifying who is liable to pay a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the nature of the charge over time. This will allow charges imposed under the Act to be targeted at the appropriate recipient of the indirect biosecurity service as operational practices evolve. This will also ensure that the charges are consistent with the *Australian Government Cost Recovery Guidelines*.

Clause 10 Exemptions from charges

This clause allows for the regulations to provide for certain persons or activities to be exempt from a charge or charges under the Act.

Specifying who is exempt from a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the nature of the charge over time. This will provide the department with the ability to act in exceptional circumstances or where government policy requires that a class of persons be exempt from charges – for example, the diplomatic corps.

Part 3—Validation

Clause 11 Validation of fees charged under the *Quarantine Act 1908*

This clause provides that where a charge has been imposed under the Quarantine Act and it was done so in a manner that may be found to be invalid, the charge is validly imposed under this Act. This ensures that the government's intention to recover the costs of providing services is done so validly under law.

This clause also provides that the amount of the charge validly imposed under this Act will be equal to the amount purported to be imposed by the Quarantine Act in relation to the same matter. This ensures that no charge validly imposed under this Act is of greater or lower value than originally charged.

This clause further provides that the amount of the validly imposed charge may be reduced by an amount already paid or remitted. Where the charge has been paid in full, liability will be reduced to zero. This ensures that where an invalidly imposed charge has been paid the validly imposed charge is also taken to be paid. Where a person recovers from the Commonwealth an amount which has been invalidly charged, through a court or other means, the validly imposed charge is increased by that amount. This ensures that where a person recovers an invalidly imposed charge from the Commonwealth, the recovered amount will be payable to the Commonwealth under a validly imposed charge.

This clause ensures that those liable to pay a charge or charges under the Act will not be liable to pay twice in relation to the same matter. Similarly, a charge under this Act is taken to have been imposed only so far as the charge would be neither general taxation nor a duty of excise within the meaning of section 55 of the Constitution.

Part 4—Miscellaneous

Clause 12 Regulations

This clause permits the Governor-General to make regulations to prescribe any matters necessary or convenient to carry out or give effect to the *Quarantine Charges (Imposition—Customs) Act 2014*.

Quarantine Charges (Imposition-Excise) Bill 2014

Part 1—Preliminary

Clause 1 Short title

This clause provides that the Bill, when enacted, may be cited as the *Quarantine Charges (Imposition-Excise) Act 2014*.

Clause 2 Commencement

This clause provides for the commencement of the Act. Each provision of the Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 in the table.

Clause 3 Act binds the Crown

This clause provides that the Act will bind the Crown in each of its capacities. This means that the Commonwealth and state and territory governments will be bound to comply with the provisions of the Act.

Clause 4 Extension to external Territories

This clause provides that the Act will extend to the territory of Christmas Island and the Cocos (Keeling) Islands. It also provides that the regulations to the Act may extend the Act or any of its provisions to any other external territory that is prescribed by the regulations.

This clause ensures that charges in relation to prescribed matters connected with the administration of the Quarantine Act can be imposed anywhere those services are provided including in the territory of Christmas Island and the Cocos (Keeling) Islands and any other external territory that is prescribed by the regulations.

Parliament will have the opportunity to scrutinise the extension of the Act to an external territory when the enabling regulations are tabled in each House of Parliament.

Clause 5 Act does not impose tax on property of a State

This clause ensures that charges imposed under the Act are not taken to be imposed on property of any kind belonging to a State.

Should a question arise whether certain charges would amount to taxation imposed on property belonging to a state, subclause 5(2) clarifies that ‘property of any kind belonging to a State’ has the same meaning as in section 114 of the Constitution.

Nothing under this clause would prevent a state voluntarily paying charges imposed under this Act.

Part 2—Charges

Clause 6 Imposition of charges

This clause permits the government to impose charges, as duties of excise, in relation to prescribed matters connected with the administration of the Quarantine Act. These matters will be prescribed in the delegated legislation and will reflect the indirect biosecurity services provided by the department, such as, but not limited to scientific analysis, intelligence and surveillance.

Charges imposed under the Act are imposed as taxes only for the purposes of cost recovery. Two or more charges may be prescribed in relation to the same matter or a single charge may cover two or more matters. This will provide the department with sufficient flexibility to ensure that any charges best reflect the indirect biosecurity services provided and allow the cost-recovery for such services to be appropriate in all circumstances.

Charges imposed under this Act are only valid insofar as the charge is a duty of excise within the meaning of section 55 of the Constitution. This ensures that persons liable to pay a charge under the Act will not be liable to pay an additional charge for the provision of the same service or product under either the *Quarantine Charges (Imposition-Customs) Act 2014* or the *Quarantine Charges (Imposition-General) Act 2014*.

Clause 7 Matters relating to amount of charges

This clause allows for regulations to prescribe charges by specifying an amount as the charge or by specifying a method for calculating the amount of a charge.

Specifying the amount of a charge or the method for calculating the amount of a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the amount of a charge or the method for calculating the amount of a charge over time. This will allow charges imposed under the Act to be increased or decreased as operational practices evolve and technology develops. This will also help to avoid over or under recovery.

Subclause 7(2) provides that before the Governor-General makes a regulation under subclause 6(1) prescribing a charge in relation to a matter, the Minister must be satisfied that the amounts of charges are set at a level that is designed to recover no more than the likely cost to the Commonwealth in connection with the matter.

This ministerial oversight provides assurance to those liable to pay a charge or charges under the Act, that the amount charged reflects the likely costs to the Commonwealth in connection with the matter. Any charges set out in the regulations will be consistent with the *Australian Government Cost Recovery Guidelines*.

Clause 8 Who is liable to pay charges

This clause allows the regulations to prescribe who is liable to pay a charge and that one or more persons may be liable to pay a particular charge or charges prescribed under the Act.

This will provide the department with sufficient flexibility to ensure that any charges best identify the recipient of the indirect biosecurity services provided and allow the cost-recovery for such services to be appropriate in all circumstances.

Specifying who is liable to pay a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the nature of the charge over time. This will allow charges imposed under the Act to be targeted at the appropriate recipient of the indirect biosecurity service as operational practices evolve. This will also ensure that the charges are consistent with the *Australian Government Cost Recovery Guidelines*.

Clause 9 Exemptions from charges

This clause allows for the regulations to provide for certain persons or activities to be exempt from a charge or charges under the Act.

Specifying who is exempt from a charge in regulations, as opposed to the Act itself, ensures that there is appropriate flexibility to change the nature of the charge over time. This will provide the department with the ability to act in exceptional circumstances or where government policy requires that a class of persons be exempt from charges – for example, the diplomatic corps.

Part 3—Validation

Clause 10 Validation of fees charged under the *Quarantine Act 1908*

This clause provides that where a charge has been imposed under the Quarantine Act and it was done so in a manner that may be found to be invalid, the charge is validly imposed under this Act. This ensures that the government's intention to recover the costs of providing services is done so validly under law.

This clause also provides that the amount of the charge validly imposed under this Act will be equal to the amount purported to be imposed by the Quarantine Act in relation to the same matter. This ensures that no charge validly imposed under this Act is of greater or lower value than originally charged.

This clause further provides that the amount of the validly imposed charge may be reduced by an amount already paid or remitted. Where the charge has been paid in full, liability will be reduced to zero. This ensures that where an invalidly imposed charge has been paid the validly imposed charge is also taken to be paid. Where a person recovers from the Commonwealth an amount which has been invalidly charged, through a court or other means, the validly imposed charge is increased by that amount. This ensures that where a person recovers an invalidly imposed charge from the Commonwealth, the recovered amount will be payable to the Commonwealth under a validly imposed charge.

This clause ensures that those liable to pay a charge or charges under the Act will not be liable to pay twice in relation to the same matter. Similarly, a charge under this Act is taken to have been imposed only so far as the charge would be neither general taxation nor a duty of customs within the meaning of section 55 of the Constitution.

Part 4—Miscellaneous

Clause 11 Regulations

This clause permits the Governor-General to make regulations to prescribe any matters necessary or convenient to carry out or give effect to the *Quarantine Charges (Imposition–Excise) Act 2014*.