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Date introduced: 3 June 2015
House: House of Representatives
Portfolio: Agriculture
Commencement: Various dates as set out in the body of this Bills Digest.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Imported Food Charges (Collection) Bill 2015, the Imported Food Charges (Imposition—General) Bill 2015, the Imported Food Charges (Imposition—Customs) Bill 2015 and the Imported Food Charges Imposition—Excise) Bill 2015, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
The Excise Bill and the Customs Bill........................................... 9
**Purpose of the Bills**

The four Bills discussed in this Bills Digest form a package that seeks to enable the making of regulations which charge a levy in relation to matters connected with the administration of the *Imported Food Control Act 1992*.\(^1\)

The Imported Food Charges (Collection) Bill 2015 (the Collection Bill)\(^2\) provides for the collection of charges in relation to imported food and late payment fees. The imported food charges are imposed by the other Bills in the legislative package, being:

- Imported Food Charges (Imposition—General) Bill 2015 (the General Bill)\(^3\)
- Imported Food Charges (Imposition—Customs) Bill 2015 (the Customs Bill)\(^4\) and
- Imported Food Charges (Imposition—Excise) Bill 2015 (the Excise Bill).\(^5\)

**Structure of the Bills**

The Collection Bill contains four parts:

- **Part 1** deals with preliminary matters
- **Part 2** contains provisions relating to paying imported food charges
- **Part 3** contains provisions relating to unpaid imported food charges and
- **Part 4** deals with miscellaneous matters such as remitting and refunding imported food charges.

The General Bill, the Customs Bill and the Excise Bill each contain three parts:

- **Part 1** deals with preliminary matters
- **Part 2** includes provisions relating to charges and
- **Part 3** deals with the making of regulations necessary or required by the Bills.

**Background**

**Current review**

The Department of Agriculture is currently conducting a comprehensive review of cost recovery fees and charges.\(^6\) The aim of the review is to, amongst other things, streamline existing frameworks and update fees and charges to reflect the current business operating model.\(^7\)

The Department of Agriculture has sought to gauge industry’s views by way of a series of discussion papers on various aspects of the redesign. These canvas matters such as:

- the application of cost recovery levies and fees
- standard treatment of travel costs
- charging for out of hours service and
- annual indexation of fees and charges.\(^8\)

According to the Department of Agriculture:

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7. Ibid.
There are a number of processes that still need to be completed to progress the redesign of cost recovery arrangements ... The next round of consultation with [industry Consultative Committees] ICCs will occur in June–July 2015.

Draft Cost Recovery Implementation Statements are planned to be released for broader public consultation in July–August 2015. These will include the proposed fees and charges.9

A risk-based approach

Over recent years Australia’s biosecurity and quarantine processes have moved towards a risk based approach.10 A risk based approach can be broadly defined by a ‘collection of strategies which, at the very least, involve the targeting of enforcement resources on the basis of assessment of the risks that a regulated person or firm poses to the regulator’s objectives’.11 This approach assesses the need to inspect imported food consignments depending on the potential risk they pose and the likelihood of an adverse event occurring.

All imports of food into Australia must comply with quarantine conditions.12 Imported food must also meet established food safety standards.13 The Department of Agriculture inspects food imports through the imported food inspection scheme in a risk based manner. The legislative basis for the imported food inspection scheme (the scheme) is contained in the Imported Food Control Regulations 1993.14 Under the scheme at least five per cent of consignments of imported food are randomly inspected.15 Imported food is classified as either ‘surveillance’ or ‘risk food’.16 ‘Risk’ food is food that has the potential to pose a high or medium risk to public health.17 ‘Surveillance’ food is food that is not categorised as ‘risk food’.18 If imported food is classed as ‘risk food’, either:

• each consignment from a particular source is inspected or
• 25 per cent of consignments from a particular source are randomly inspected or
• five per cent of consignments from a particular source are randomly inspected.19

The Imported Food Control Act provides that an amount is payable for a chargeable service before the service is rendered or at the time the service is rendered.20

Essentially then, although the community and food importers as a whole benefit from the inspection of imported food to maintain food safety standards, only those who are importing food which is subject to an inspection are required to pay.

These Bills will allow the department to recover non-specific costs associated with the scheme, such as intelligence, surveillance and the development of audit and compliance standards for third party arrangements.

The package of Bills provides a legislative basis for the cost recovery of services that align Australia’s system for the management of imported food with an efficient and effective cost recovery model consistent with the Australian Government Cost Recovery Guidelines.21

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9. Ibid.
13. The food safety standards are part of the Food Standards Code established in accordance with the Food Standards Australia New Zealand 1991, accessed 11 June 2015.
Committee consideration

**Senate Standing Committee for the Selection of Bills**
The Standing Committee for the Selection of Bills decided not to refer the Bills in this legislative package to Committee for inquiry and report.\(^{22}\)

**Senate Standing Committee for the Scrutiny of Bills**
The Standing Committee for the Scrutiny of Bills had no comment on the General Bill, the Customs Bill or the Excise Bill, but has sought information from the Minister on elements of the Collection Bill—specifically the use of delegated legislation to set a late payment fee (clause 11) and the constraint on the ability to bring legal action against the Commonwealth or one of its officers for actions undertaken in good faith (clause 20).

**Parliamentary Joint Committee on Human Rights**
The Parliamentary Joint Committee on Human Rights had no comment on the package of Bills.\(^{23}\)

**Statement of Compatibility with Human Rights**
As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government acknowledged that the Collection Bill may engage the following human rights:

- Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR)—right to a fair hearing\(^{24}\)
- Article 17 of the ICCPR—right to protection from arbitrary and unlawful interferences with privacy and
- Article 6(1) of the International Covenant on Economic Social and Cultural Rights—right to work.\(^{25}\)

Nevertheless, the Government considers that the relevant provisions are reasonable and necessary and that the Collection Bill is compatible.\(^{26}\)

The Government considers that the General Bill, the Customs Bill and the Excise Bill do not engage any of the applicable rights or freedoms.\(^{27}\)

**Policy position of non-government parties/independents**
The package of Bills does not appear to have raised concerns or commentary from non-government parties, as of the time of writing.

**Position of major interest groups**
At the time of writing, it appears food importers had not made any public comment in relation to the contents or effect of the Bills in the legislative package.

**Financial implications**
The Explanatory Memorandum to the Collection Bill and the Explanatory Memorandum to the General Bill, the Customs Bill and Excise Bills indicate that the Bills will have no financial impacts on the Commonwealth.

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*Imported Food Charges (Collection) Bill 2015*  
**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
The Bills do not set the amounts of the charges but will enable charges to be set in regulations which may impact all food importers, not just those inspected. This may result in a financial impact on business.

**Key issues and provisions**

**The Collection Bill**

The Collection Bill commences on the day after Royal Assent.

It provides for the collection of charges in relation to imported food and late payment fees.

**Paying imported food charges**

Clause 8 provides that regulations may prescribe the time when an *imported food charge* is due and payable and/or prescribe rules relating to the payment of the charges by an importer’s agent and the recovery of the charges by the agent from the importer. **Clause 6** of the Collection Bill defines the term *imported food charge* as a charge imposed under:

- section 6 of the *Imported Food Charges (Imposition—Customs) Act 2015*
- section 6 of the *Imported Food Charges (Imposition—Excise) Act 2015* or
- section 6 of the *Imported Food Charges (Imposition—General) Act 2015*.

**Clause 9** specifies that the Commonwealth is notionally liable to pay the imported food charge, including late payment fees, for activities performed in relation to imported food under the *Imported Food Control Act* (subclause 9(1)). It also provides that the Minister for Finance may give written directions to collect charges from agencies and other Commonwealth bodies (subclause 9(2)). Subclause 9(3) provides that any direction made under subclause 9(2) must be complied with, despite any other Commonwealth law. Subclause 9(4) establishes that any direction made under subclause 9(2) is not a legislative instrument. This means that any direction under subclause 9(2) is not subject to disallowance under section 42 of the *Legislative Instruments Act 2003*.29

According to the Explanatory Memorandum for the Collection Bill:

> The intent for this clause is that, under the Minister for Finance’s direction, the department will have the legal authority to collect charges from agencies and other Commonwealth bodies for activities performed in relation to imported food under the *Imported Food Control Act*, and those bodies will have the legal authority to make payments to the department for such activities.30

**Unpaid imported food charges**

Clause 11 establishes that if regulations which prescribe the time when an imported food charge is due and payable, they may also set a *late payment fee* (subclause 11(1)). The late payment fee may relate to each day, or part of a day, when the charge remains unpaid after becoming due (subclause 11(2)). The regulation may also prescribe who is liable to pay the late payment fee (subclause 11(3)).

**Clause 12** applies to a *debtor* who is liable to pay an *imported food charge* or late payment fee that is due and payable.

Under subclause 12(2) the Secretary may, by written notice to a debtor, suspend an *imported food control instrument* of the debtor until the imported food charge or late payment fee is paid—or simply revoke the imported food control instrument. The term *imported food control instrument* of a person means:

- a food control certificate given to the person
- an approval under subsection 19(1A) of the *Imported Food Control Act* of an overseas food processing operation conducted by the person

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• a determination under subsection 19(2) of the *Imported Food Control Act* that relates to an overseas food processing operation conducted by a person
• a compliance agreement to which the person is a party or
• an approval (however described) given to the person under the *Imported Food Control Act* that is prescribed by the regulations.

The notice must include reasons for the decision and outline the debtor’s right to have the decision reviewed (subclause 12(3)).

**Subclause 12(5)** empowers the Secretary to direct a person not to take certain actions until an imported food charge or late payment fee is paid. These are:

- give a food control certificate to the debtor
- issue an imported food inspection advice to the debtor
- approve under subsection 19(1A) of the *Imported Food Control Act* an overseas food processing operation which is conducted by the debtor
- make a determination under subsection 19(2) of the *Imported Food Control Act* that relates to an overseas food processing operation conducted by the debtor
- enter into a compliance agreement with the debtor and
- carry out specified activities, or specified kinds of activities, in relation to the debtor under the *Imported Food Control Act*.

A direction made under **subclause 12(5)** is not reviewable on its merits (judicial review is available). According to the Explanatory Memorandum:

> In addition to encouraging compliance with the Bill, this clause is intended to prevent the department from directing resources toward providing activities and incurring costs where a person has not paid the required imported food charge or late fee. The inclusion of a review mechanism would unnecessarily add to the administrative burden of administering the Bill and would be contrary to the purpose of this clause.  

Clause 13 provides that an unpaid imported food charge or a late payment fee may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

**Miscellaneous**

Clause 15 allows the Secretary, on his or her own initiative, or on written application by a person, to remit or refund the whole or part of an imported food charge or late payment fee that is payable or has been paid.

Clause 16 provides that, if the Secretary has reasonable grounds to believe that a person has information or documents relevant to the operation of the *Imported Food Control Act* or an imported food charge, he, or she, may by written notice, require that person to provide the information or documents which are specified in the notice. The notice must specify the period within which the information or documents are to be provided, being not less than 14 days after the notice is given (subclause 16(2)). Under **subclause 16(3)**, a person commits an offence if he, or she, is given a notice under this clause and fails to comply with the notice. The penalty for the offence is 30 penalty units.

Clause 17 provides for the internal review of a decision to suspend or revoke an imported food control instrument which has been made by a delegate of the Secretary. In that case, the affected person may apply in writing to the Secretary for review of the original decision. **Subclause 17(2)** sets out the formal requirements of the application. Once the application is received, the Secretary must review the decision personally, or cause the decision to be reviewed by another person who was not involved in the original decision and is senior to the original decision maker (subclause 17(3)).

31. Ibid., p. 10.
32. Section 4AA of the *Crimes Act 1914* provides that a penalty unit is equivalent to $170. This means that the maximum penalty payable is $5,100.
The internal reviewer may affirm, vary or set aside the original decision. Where the original decision is set aside, the internal reviewer may make such other decision as he or she thinks appropriate (subclause 17(4)). The decision of the internal reviewer is called the decision on review. Having made the decision on review the internal reviewer must give the applicant a written notice setting out the terms of the decision and the reasons for it. In addition, the internal reviewer must inform the applicant of his, or her, right to have the decision reviewed by the Administrative Appeals Tribunal (AAT) (subclause 17(6)). If the applicant has not received notice of the decision on review within 90 days after the application for internal review was made, then the original decision is deemed to have been affirmed (subclause 17(7)). The Secretary may require a person who has applied for review to give further information about the application and may refuse to consider the application until the information is received (clause 18).

Clause 19 provides that a person may make an application to the AAT for a review of the following decisions:

- a decision to suspend or revoke an imported food control instrument made personally by the Secretary under subclause 12(2) and
- a decision of an internal reviewer made under clause 17 about a decision to suspend or revoke an imported food control instrument.

Subsection 27(1) of the Administrative Appeals Tribunal Act 1975 (AAT Act) states that ‘an application may be made by or on behalf of any person or persons (including the Commonwealth or an authority of the Commonwealth or Norfolk Island or an authority of Norfolk Island) whose interests are affected by the decision’. However, subclauses 19(2) and (3) of the Bill operate so that an application to the AAT for a review of the decisions set out above may only be made by, or on behalf of, a person whose imported food control instrument was suspended or revoked. This is an exception to the general rule in subsection 27(1) of the AAT Act.

Clause 20 provides that the Commonwealth or a protected person will have protection from civil proceedings for anything done or omitted to be done in good faith in the exercise, or purported exercise of a power conferred by the Imported Food Charges (Collection) Act (when enacted). The term protected person is defined in clause 6 of the Bill as being any of the following:

- the Secretary
- a person who has been given a direction not to take certain actions until an imported food charge or late payment fee is paid (under subclause 12(5))
- a person who is given information or documents in accordance with a notice given under subclause 16(1) or
- a person who is delegated by the Secretary to exercise the powers and functions of the Secretary under clause 21.

The protection extends to a person providing assistance, information or documents to a protected person as a result of a request, direction or other requirement made by the protected person (paragraph 20(b)).

The Governor-General may make regulations prescribing matters that are required or permitted to be prescribed or are necessary and convenient to carry out or give effect to the Imported Food Charges (Collection) Act (when enacted) (clause 22).

The General Bill

Sections 1 and 2 of the General Bill commence on the day of Royal Assent. The remaining sections of the General Bill commence on the later of either the day after Royal Assent or immediately after the commencement of the Collection Bill. However if the Imported Food Charges (Collection) Act 2015 is not enacted, or does not commence, the provisions of the General Bill will not commence.

Charges

Clause 6 provides that regulations may prescribe charges which are imposed as taxes (subclause 6(2)), in relation to prescribed matters connected with the administration of the Imported Food Control Act in order to

'reflect the costs of corporate activities and supporting imported food activities provided by the Department such as intelligence, audit and compliance standards for third party arrangements’.  

Two or more charges may be made in relation to the same prescribed matter and a single charge may be made in relation to two or more matters (subclause 6(3)). Subclause 6(4) provides that a charge is only imposed so far as it is neither a duty of customs nor a duty of excise. The Explanatory Memorandum states that the levy ‘will be used to recover costs of activities provided to a group of importers’.  

Subclause 7(1) allows the regulations to prescribe a charge by specifying an amount as the charge or by specifying a method for calculating the amount of the charge. Subclause 7(2) specifies that before a regulation is made to impose a charge (under clause 6) the Agriculture Minister must be satisfied that the amount is set at a level that will recover only the likely costs in connection with the matter.  

Clause 8 of the General Bill provides that the regulations may prescribe one or more persons who are liable to pay a specified charge. In addition, clause 9 permits regulations to provide for exemptions from a charge.  

Clause 10 empowers the Governor-General to make regulations prescribing matters that are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Imported Food Charges (Imposition—General) Act (when enacted).  

The Excise Bill and the Customs Bill  
Sections 1 and 2 of both the Excise Bill and the Customs Bill commence on the day of Royal Assent. The remaining sections of both the Excise Bill and the Customs Bill commence on the later of the day after Royal Assent or immediately after the commencement of the Collection Bill. However if the Imported Food Charges (Collection) Act 2015 is not enacted, or does not commence, the provisions of the Excise Bill and the Customs Bill will not commence.  

The Excise Bill and the Customs Bill contain provisions that are in equivalent terms to those in the General Bill, except for subclause 6(4) which specifies that a charge is imposed only so far as a duty of excise (for the Excise Bill) and as a duty of customs (for the Customs Bill). According to the Explanatory Memorandum individual matters of taxation are required to be included in separate pieces of legislation, consistent with the Constitution.  

35. Ibid., p. 1.  
36. Ibid., p. 7.