EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 42

Issued by the Authority of the Parliamentary Secretary
for Agriculture, Fisheries and Forestry

Primary Industries (Excise) Levies Act 1999
Primary Industries Levies and Charges Collection Act 1991

Primary Industries (Excise) Levies Amendment Regulations 2011 (No. 2)
Primary Industries Levies and Charges Collection Amendment Regulations 2011 (No. 2)

Section 8 of the Primary Industries (Excise) Levies Act 1999 (the Levies Act) and section 30 of the Primary Industries Levies and Charges Collection Act 1991 (the Collection Act) provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to each Act.

The Regulations pertain to the statutory levy imposed on Agaricus mushroom growers. The purpose of the Regulations is to increase the upper threshold exemption of spawn upon which levy is paid by any one mushroom grower in a financial year from 250,000 kilograms to 370,000 kilograms. The reason for the change is to restore equity of payment between all mushroom producers (levy payers).

Primary Industries (Excise) Levies Regulations 1999
Subclause 4(1) and subclause 4(3) of Schedule 15 of the Levies Act provide that regulations may fix a rate of levy for marketing and for research and development (R&D) respectively.

Subclause 6(4) and subclause 6(6) of Schedule 15 of the Levies Act provide that before the Governor-General makes regulations to respectively fix rates of marketing levy and R&D levy the Minister must take into consideration any relevant recommendations made to the Minister for Agriculture, Fisheries and Forestry (the Minister) by Horticulture Australia Limited (HAL).

Subclause 6(7) and subclause 6(8) of Schedule 15 of the Levies Act respectively require HAL to consult with the body that is the eligible industry body for the relevant horticultural product before recommending rates of, and exemptions from, marketing levy and R&D levy to the Minister.

Subclause 6(9) of Schedule 15 of the Levies Act requires that a recommendation made by HAL to the Minister be accompanied by a written statement of the views of the industry body consulted in relation to the recommendation.

Schedule 15, clause 18.8, of the Primary Industries (Excise) Levies Regulations 1999 specifies the Australian Mushroom Growers Association (AMGA) as the eligible industry body with which HAL must consult in relation to Agaricus mushrooms. HAL recommended the increase in the exemption threshold for the levy on Agaricus mushrooms to the Minister after consultation with the AMGA. The Regulations give effect to the recommendations of HAL, which are consistent with the Agaricus mushroom industry request.
Primary Industries Levies and Charges Collection Regulations 1991
Schedule 22 to the Primary Industries Levies and Charges Collection Regulations 1991 sets out for various leviable horticultural products: details for payment of levy; provision of returns by liable persons; and other collection matters.

Background information and further details on the Regulations are set out in the attachment.

The Regulations are legislative instruments for the purposes of the Legislative Instruments Act 2003.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulations and agreed that a Regulation Impact Statement was not required (OBPR Ref. 10915).

The Regulations commence on 1 July 2011.

1008899A
1008906A
BACKGROUND INFORMATION

Since 1 January 2002 the Agaricus mushroom industry has paid a statutory marketing and R&D levy to HAL of $2.16 per kilogram on mushroom spawn produced or purchased for use in the production of Agaricus mushrooms. The marketing levy component is $1.62 per kilogram (75% of the total levy) and the R&D levy component is $0.54 per kilogram (25%).

Since the introduction of the levy there has been an upper threshold of 250,000 kilograms of spawn upon which levy is paid by any one mushroom grower in a financial year. The upper threshold was put in place to accommodate Australia’s largest mushroom grower, Mushroom Exchange (ME), which utilised a different production method to all other mushroom growers. The industry determined an ‘equivalent’ amount of spawn that might be used by ME if it was producing in the same way as all other producers. Based on this ‘equivalent’ amount and ME’s then proportion of national production it was determined that the amount of spawn on which ME would pay levy would be 250,000 kilograms annually. The result in monetary terms is that ME pays no more than $540,000 in levy each financial year. No other mushroom grower has ever produced 250,000 kilograms of spawn in a financial year and no other grower is close to that level of production.

However, since 1 January 2002, ME has expanded its business, primarily through a process of acquisition of other mushroom production businesses, and thus increased its proportion of total national production. Each of the acquired businesses, prior to their takeover, paid levy based on the amount of spawn they purchased. After their takeover, their spawn usage was added to the ME spawn volume. The consequence being that ME has continued to pay $540,000 in levy annually even though its spawn volume has increased well beyond the upper threshold of 250,000 kilograms.

This situation has led to an inequity in payment of levy between producers. The other producers are paying levy on their total mushroom production while ME is only paying a levy between 65-70 per cent of its ‘equivalent’ total mushroom production. This gives ME a financial advantage over the other producers and has reduced the potential funds available to the industry for marketing and R&D projects.

The AMGA is proposing to increase the upper threshold to 370,000 kilograms of spawn produced, which would equate to ME’s ‘equivalent’ proportion of current total national spawn production. In monetary terms ME would pay $799,200 in levy each financial year, an increase of $259,200 on current arrangements. ME has agreed to this increase in the upper threshold in a written agreement with the AMGA. As ME is the only mushroom grower directly affected by the increase in the upper threshold exemption, the AMGA considered there was no need to undertake a ballot of all mushroom growers. All the other mushroom growers would be indirect beneficiaries of the change.

The additional $259,200 to be raised would result in an extra $194,400 for marketing and an extra $64,800 for R&D annually. It would also result in an extra $64,800 in government matching funds being payable for expenditure on R&D. This matching funding is provided under the Horticultural Marketing and Research and Development Services Act 2000.
DETAILS OF THE PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2011 (No. 2)

Regulation 1 – Name of Regulations

This regulation would provide for the name of the Regulations to be the Primary Industries (Excise) Levies Amendment Regulations 2011 (No. 2).

Regulation 2 – Commencement

This regulation would provide for the commencement date to be 1 July 2011.

Regulation 3 – Amendment of Primary Industries (Excise) Levies Regulations 1999

This regulation would provide that Schedule 1 amends the Primary Industries (Excise) Levies Regulations 1999 (the Excise Levies Regulations).

Schedule 1 Amendments

Item [1] – would amend Schedule 15, Part 18, clause 18.4 which provides for an upper threshold of mushroom spawn purchased or used in a levy year upon which levy is paid in that levy year. The amendment would increase the upper threshold from 250,000 kilograms to 370,000 kilograms of mushroom spawn. The amendment would mean that if a producer produces or purchases more than 370,000 kilograms of mushroom spawn in a levy year for the production of Agaricus mushrooms, every kilogram of mushroom spawn over 370,000 kilograms is exempt from levy in that levy year.

DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2011 (No. 2)

Regulation 1 – Name of Regulations

This regulation would provide for the name of the Regulations to be the Primary Industries Levies and Charges Collection Amendment Regulations 2011 (No. 2).

Regulation 2 – Commencement

This regulation would provide for the commencement date to be 1 July 2011.

Regulation 3 – Amendment of Primary Industries Levies and Charges Collection Regulations 1991

This regulation would provide that Schedule 1 amends the Primary Industries Levies and Charges Collection Regulations 1991 (the Collection Regulations).
Schedule 1 Amendments

Item [1] – would amend Schedule 22, Part 18, clause 18.8A to specify that mushroom producers who have reasonable grounds for believing they will produce or purchase 370,000 kilograms or more of mushroom spawn in a levy year can make an application to the Secretary of the Department of Agriculture, Fisheries and Forestry for an alternative monthly payment method.

Item [2] – would amend Schedule 22, Part 18, subclause 18.8C (2) which provides the method for an alternative monthly payment for a producer granted an application by the Secretary under clause 18.8A. The amendment would mean at the end of a month where a producer produces or purchases mushroom spawn exceeding the expected fraction for that month, the amount of levy payable by the producer for that month is $66,600. The term expected fraction is defined in subclause 18.8C (3).

Item [3] – would amend Schedule 22, Part 18, subclause 18.8C (3) which defines the formula for the term expected fraction mentioned in subclause 18.8C (2). The amendment would define the formula as being 370,000 divided by 12 multiplied by the number of months that have elapsed in the levy year.