EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 240

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

Primary Industries (Customs) Charges Act 1999

Primary Industries (Excise) Levies Act 1999

Primary Industries Legislation Amendment Regulation 2012 (No. 2)

Legislative Authority

Section 8 of the Primary Industries (Customs) Charges Act 1999 (the Charges Act) and the Primary Industries (Excise) Levies Act 1999 (the Levies Act) provides 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 those Acts. The Charges Act and the Levies Act provide for the ability to impose charges and levies, respectively, on horticultural products.

Clause 2, Part 2, Schedule 14 to the Charges Act and Clause 2, Part 2, Schedule 27 to the Levies Act provide that the Primary Industries (Customs) Charges Regulations 2000 (Charges Regulations) and Primary Industries (Excise) Levies Regulations 1999 (Levies Regulations) impose charges or levies on primary industry products, respectively.

Plant Health Australia (PHA) is the national coordinator of the government-industry partnership for plant biosecurity in Australia. Schedule 10 to the Charges Regulations and Schedule 15 to the Levies Regulations impose special purposes charges and levies, including Plant Health Australia (PHA) charges and levies. Subclause 1 of Regulation 3 to the Charges Regulations defines PHA charge to mean the charge imposed, under Schedule 14 to the Charges Act, to fund PHA. Subclause 1 of Regulation 3 of the Levies Regulations defines PHA levy to mean the levy imposed, under Schedule 27 to the Levies Act, to fund PHA. Subclause 1 of Regulation 3 to both the Charges Regulations and Levies Regulations also provide that PHA has the meaning given by the Plant Health Australia (Plant Industries) Funding Act 2002. The rate of PHA charge is fixed by the Charges Regulations and the rate of PHA levy is fixed by the Levies Regulations.

Subclause 5.1 of Schedule 10 to the Charges Regulations and Subclause 5.1 of Schedule 15 to the Levies Regulations provide that cherries are a chargeable and leviable horticultural product, respectively.

Purpose

The Primary Industries Legislation Amendment Regulation 2012 (No. 2) (the Regulation) reduces the research and development (R&D) charge and levy for cherries by 0.03 of a cent per kilogram and establishes a new PHA charge and levy for cherries of 0.03 of a cent per kilogram.
The amendments enable the national peak representative body for cherries, Cherry Growers Australia Inc. (CGA), to meet its financial contribution to PHA. The Regulation redistributes the R&D charges and levies payable in relation to cherries and introduces a new PHA charge and levy but will not change the overall amount of charges and levies payable by producers.

PHA membership, particularly the ability to remain signatories of the Emergency Plant Pest Response Deed, provides valuable protection for industry and individual cherry growers. The Regulation is in the best interest of cherry growers.

Consultation

Subclause 5(5) of Schedule 10 to the Charges Act and subclause 6(8) of Schedule 15 to the Levies Act provides that, before the Governor-General makes regulations for the purpose of prescribing a R&D charge, the Minister must take into consideration any relevant recommendation made to the Minister by the industry services body. Horticulture Australia Limited (HAL) is the declared industry services body for cherry at the time of making the Regulations (Clause 1 of Schedule 10 to the Charges Act, Clause 1 of Schedule 15 to the Levies Act and Section 9 to the Horticulture Marketing and Research Development Services Act 2000). The industry services body may consult with the eligible industry body for the particular product or class of products affected by the Charges and Levies Regulations. A declared industry services body such as HAL is an industry owned corporation, part funded by the Australian Government. Whereas a peak industry body such as CGA represents only the interests of the cherry producers. Accordingly, the Minister considered the recommendation made by HAL in consultation with CGA in making the Regulation.

For a new charge and levy to be imposed or for a charge and levy to be amended, industry (generally through its representative body) must demonstrate that the Australian Government Levy Principles and Guidelines have been complied with. This includes demonstrating that sufficient consultation has been undertaken with all sectors of the potentially effected industry or current levy and charge payers, and that there is industry support for the new charge and levy or change in charge and levy rate.

CGA’s submission of 9 August 2011 to the Department of Agriculture, Fisheries and Forestry, further information received on 17 February and 17 April 2012 and the correspondence received from HAL on 1 December 2011 indicate that there was widespread support for the amendments to the R&D charge and levy rates and the establishment of a PHA charge and levy amongst members of the cherry industry.

The Office of Best Practice Regulation was consulted in the preparation of the Regulation (ID 13776).

The Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. A full statement of compatibility is set out in the Attachment.
**Details of the Primary Industries Legislation Amendment Regulation 2012 (No. 2)**

**Section 1 – Name of Regulation**

The Section provides for the title of the Regulation be the *Primary Industries Legislation Amendment Regulation 2012 (No. 2).*

**Section 2 – Commencement**

This Section provides for the Regulation to commence on 1 November 2012.

**Section 3 – Amendment of Primary Industries (Customs) Charges Regulations 2000**

This Section provides for Schedule 1 to amend the *Primary Industries (Customs) Charges Regulations 2000* (Charges Regulations).

**Section 4 – Amendment of Primary Industries (Excise) Levies Regulations 1999**

The Section provides for Schedule 2 to amend the *Primary Industries (Excise) Levies Regulations 1999* (Levies Regulations).

**Schedule 1 – Amendments of Primary Industries (Customs) Charges Regulations 2000**

**Item 1** amends subclause 5.4 of Schedule 10 of the Charges Regulations by substituting the current rate of charge for cherries research and development of 4 cents per kilogram with 3.97 cents per kilogram. This represents a reduction of 0.03 of a cent per kilogram.

**Item 2** inserts a new subclause 5.7 of Schedule 10 for a new PHA charge for cherries to the Charges Regulations. The new PHA charge for cherries is 0.03 of a cent per kilogram and payable by the producer of the cherries.

**Schedule 2 – Amendments of Primary Industries (Excise) Levies Regulations 1999**

**Item 1** amends subclause 5.4 of Schedule 15 of the Levies Regulations by substituting the current rate of levy for cherries research and development of 4 cents per kilogram with 3.97 cents per kilogram. This represents a reduction of 0.03 of a cent per kilogram.

**Item 2** inserts a new subclause 5.7 of Schedule 15 for a new PHA levy for cherries to the Levies Regulations. The new PHA levy for cherries is 0.03 of a cent per kilogram and payable by the producer of the cherries.
Statement of Compatibility with Human Rights

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

Primary Industries Legislation Amendment Regulation 2012 (No. 2)

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 Primary Industries Legislation Amendment Regulation 2012 (No. 2) amends the Charges and Levies Regulations by:

- Substituting the levy rate and charge for cherries research and development of 4 cents per kilogram with 3.97 cents per kilogram, which is payable by the producer of the cherries.
- Inserting a new clause that provides for the new PHA levy and charge of 0.03 of a cent per kilogram, which is payable by the producer of the cherries.

The amendment enables Cherry Growers Australia Inc. meet its annual membership subscription to PHA. The overall amount of levy and charge collected will not change.

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.

The Hon. Peter Douglas Sidebottom MP
Parliamentary Secretary for Agriculture, Fisheries and Forestry