

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 261**

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

*Dairy Produce Act 1986*

*Dairy Produce (Dairy Service Levy Poll) Regulations 2006*

Section 126 of the *Dairy Produce Act 1986* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides for the marketing and export of dairy produce, and the collection of levies from the industry. The dairy service levy was introduced and is administered by the Australian Government at the request of the dairy industry to enable research and marketing activities to be undertaken which benefit the Australian dairy industry.

As provided for under section 7 of the Act, the Minister declared, on 1 July 2003, Dairy Australia Limited (DA) to be the industry services body for the Australian dairy industry. The role of DA is to provide research, development, marketing and other industry services for the benefit of the Australian dairy industry.

Subsection 9(1) of the Act requires that the industry services body must make recommendations to the Minister in relation to the amount of the dairy service levy. Subsection 9(1) also requires the industry services body to make recommendations by the time specified in the regulations. Subsection 9(2) requires that before making each recommendation, the industry services body must conduct a poll in accordance with the regulations and that the recommendation must be in accordance with the results of that poll.

The purpose of the Regulations is to set out the timing and requirements for the conduct of a poll of dairy levy payers to enable DA to make a recommendation on the rate of levy. The levy would be used to fund research and marketing activities that are undertaken by DA.

In addition to industry levies, DA is also currently funded through a contract (the *Funding Contract*) entered into by the Minister, on behalf of the Commonwealth, with DA. The Act provides for the appropriation of payments under the Funding Contract and establishes limits on the appropriation. Payments under the Funding Contract are made by reference to *new dairy levy amounts* and *old dairy levy amounts*. Both of these are defined in the Act. In effect, the Commonwealth matches, dollar-for-dollar, industry levies that are spent on research and development up to a specified ceiling.

The initial rate of dairy services levy was set by Schedule 6 to the *Primary Industries (Excise) Levies Regulations 1999*. Schedule 6 imposes a rate of levy on relevant dairy produce equal to the sum of amounts calculated at the milk fat rate (clause 1) and protein rate (clause 2); the current rate of levy is set at 2.6075 cents/kg on milk fat and 6.3558 cents/kg on protein.

Prior to the Regulations, there were no mechanisms in place to set out the process for conducting a poll of industry members. The Australian Dairy Industry Council Inc, the peak policy council for

the dairy industry, advised that in order to comply with the Act, it wished to conduct a poll around March 2007 with a recommendation to the Minister on the rate of levy to be made in April 2007, and for this to take effect it requested the Department of Agriculture, Fisheries and Forestry to put in place the appropriate regulations.

The Department was satisfied Australian Dairy Industry Council Inc worked closely with its members, (the Australian Dairyfarmers Limited (ADF) and the Australian Dairy Products Federation) and DA in developing its advice to the Minister. The Department kept in close contact with DA in the course of drafting the Regulations. As a member of DA and as the national representative group of dairy farmers, ADF was included in the consultation process and was also given the opportunity to comment on the Regulations during the drafting process.

The Regulations, among other things, prescribe the process for conducting a poll which will determine the rate of levy that would be paid by dairy farmers, with up to 5 rates being put to voters to decide, including a zero rate, and that a recommendation on the rate of levy must be made to the Minister by 8 April 2007, and every 5 years hence. The Regulations also set out that DA must determine farmers' eligibility to vote, based on the dairy service levy paid in the previous financial year, and their voting entitlements.

The following is an example of a reasonable timetable to enable the dairy industry to comply with the Regulations:

cut-off day for the poll:	28 November 2006
the voting kits sent to voters:	28 January 2007
the return day:	11 March 2007; and
the recommendation day:	8 April 2007.

Details of the Regulations are set out in the [Attachment](#).

The Regulations are a select legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered.

**DETAILS OF THE *DAIRY PRODUCE (DAIRY SERVICE LEVY POLL) REGULATIONS 2006***

**Part 1 - Preliminary**

Regulation 1 provides for the name of the Regulations to be the *Dairy Produce (Dairy Service Levy Poll) Regulations 2006*.

Regulation 2 provides for the commencement date to be the day after the Regulations are registered.

Regulation 3 states the objects of the Regulations, which among other things, set out the requirements for the conduct of polls by the industry services body in relation to the amount of dairy service levy.

Regulation 4 provides a set of definitions that are relevant to the Regulations.

**Part 2 – Recommendations to the Minister**

Regulation 5 provides for recommendations to be made to the Minister by the industry services body in relation to the amount of dairy service levy.

Regulation 6 provides for the results of the poll to accompany the industry services body's recommendation.

**Part 3 – Conduct of Polls**

Regulation 7 provides for the industry services body to determine cut-off and return days for polls.

Regulation 8 provides for the industry services body to change return days if it becomes apparent that one or more eligible voters are unable to return their ballot papers due to unforeseen circumstances.

Regulation 9 provides for the industry services body to determine an entity's eligibility to vote and its voting entitlements.

Regulation 10 provides for the industry services body to determine that an entity is eligible to vote in the poll provided it has paid its dairy service levy either to the Commonwealth, or through a first purchaser, manufacturer, buying agent or selling agent for the levy year.

Regulation 11 provides for the industry services body to determine the voting entitlement of an eligible voter as being one vote for each whole dollar of dairy service levy that the entity paid, or an intermediary paid on behalf of an entity, before the cut-off day.

Regulation 12 provides for the industry services body to use any information available to it to make a determination under regulations 10 or 11.

Regulation 13 provides for the industry services body must send to each eligible voter, within 15 days after the cut-off day for a poll, a notice stating their voting entitlement.

Regulation 14 provides that the industry services body must maintain an electronic register of eligible voters that contains the list of eligible voters and their voting entitlements.

Regulation 15 provides for the industry services body to send to eligible entities, not later than 5 weeks before the return day of a poll, a voting kit comprising a ballot paper, a copy of the voting instructions, a copy of the information memorandum and a reply-paid envelope.

Regulation 16 requires the industry services body to propose 3 to 5 rates of dairy services levy, including a zero rate.

Regulation 17 provides for the ballot paper to set out the name of the voter, the voter's voting entitlement and each of the rates proposed by the industry services body.

Regulation 18 requires the industry services body to send out to voters a detailed set of voting instructions to enable them to cast valid votes.

Regulation 19 provides for the information memorandum to set out, for each of the rates listed on the ballot paper, the amount of funds the industry services body estimates it will receive under the funding contract if that rate is adopted by the Minister; how the industry services body proposes to spend those funds; the industry services body's recommended rate, its reason for recommending this rate; and any other information the industry services body considers appropriate.

Regulation 20 provides for the Minister to approve the ballot paper, voting instructions and the information memorandum.

Regulation 21 describes how an eligible voter can cast a valid vote.

Regulation 22 provides for voters to fax the marked ballot paper to the returning officer by the end of the return day.

Regulation 23 provides for the appointment of an individual with relevant expertise to be the returning officer for the poll.

Regulation 24 provides for the returning officer to examine the ballot paper to determine whether it has been marked in accordance with the voting instructions, and if it has, confirm information about the voter's entitlement recorded on the Register of eligible voters, and allocate to the voter the voting entitlement recorded on the Register.

Regulation 25 describes how the returning officer is to count the valid votes to determine the rate of levy that is to be recommended to the Minister.

Regulation 26 requires the returning officer to keep all ballot papers, and any documents relating to the poll, in a secure place for at least two years, and then destroy them.

#### **Part 4 – Reconsideration and Review of Decisions**

Regulation 27 allows for voters to apply to the industry services body for a reconsideration of its determination of their voting entitlement, and that the application must be received by the body within 14 days after the day specified in the notice.

Regulation 28 provides for the industry services body to consider, within 14 days, an application for reconsideration made under regulation 27.

Regulation 29 provides for the industry services body to establish a Disputes Panel for the poll within 14 days after the cut-off day for a poll, and sets out how it will operate.

Regulation 30 determines that the industry services body must consult representatives of the entities that will be, or are likely to be, eligible to vote in the poll, about its proposal to appoint members to the Disputes Panel.

Regulation 31 allows eligible voters to apply to the Disputes Panel for a review of the industry services body's reconsidered decision, and that the application must be received by the Panel within 14 days after the day specified in the notice.

Regulation 32 allows for the Disputes Panel to consider, within 14 days, the application made under regulation 31 and make a decision either affirming the decision made on reconsideration or varying that decision and stating the reconsidered voting entitlement.