

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 353

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

Primary Industries Levies and Charges Collection Act 1991

Primary Industries Levies and Charges Collection Amendment Regulations 2009 (No. 2)

Section 30 of the *Primary Industries Levies and Charges Collection Act 1991* (the Act) provides, in part, that the Governor-General may make regulations prescribing 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 Regulations amend the *Primary Industries Levies and Charges Collection Regulations 1991* (the Principal Regulations) to declare laying chickens as *prescribed goods*. This removes ambiguity associated with the due date for paying the egg levy and ensures that the egg levy collection legislation is consistent with other primary industry levies in application and structure. The Regulations do not affect a person's liability to pay the egg levy.

The egg levy is payable on the commercial production of eggs in Australia that are sold by the producer, or used by the producer in the production of other goods. The levy is payable by the producer of the eggs. The Australian Egg Corporation Limited is responsible for the coordination of promotion programs for the egg industry funded by the egg levy.

For ease of levy collection, the number of eggs deemed to be produced is determined by reference to the number of laying chickens bred or purchased for use in the commercial production of eggs. The rate of egg levy is 32.5 cents for each laying chicken bred for use in the commercial production of eggs.

For the purposes of subsection 9(2) of the Act, where a levy's collection mechanism is linked to a related input product, laying chickens in this case, that related input product is to be declared as a *prescribed good* in regulations. Whilst laying chickens are not currently declared as *prescribed goods* in the Principal Regulations, egg producers are currently liable and will continue to be liable to pay the egg levy.

Details of the Regulations are contained in Attachment A.

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

The Office of Best Practice Regulations (OBPR) was consulted in the preparation of the Regulations. The OBPR has advised that it is not necessary to prepare a Regulation Impact Statement or Business Cost Calculator for this matter (Reference number 10616).

An OBPR Preliminary Assessment was completed and is at Attachment B.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

DETAILS OF THE *PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2009 (No. 2)*

Regulation 1 provides for the name of the Regulations to be the *Primary Industries Levies and Charges Collection Amendment Regulations 2009 (No. 2)*.

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

Regulation 3 provides that Schedule 1 amends the *Primary Industries Levies and Charges Collection Regulations 1991*.

Schedule 1 Amendment to Part 4 of Schedule 37

Item [1] inserts a new clause 4.4A which identifies laying chickens as goods used in the production of other goods, being leviable eggs (*prescribed goods*).

The note explains the definition of *prescribed goods or services* provided in subsection 4(1) of the Act as goods or services used in subjecting leviable products to a process in the course of their production or preparation for sale or in their use to produce other goods.

Item [2] inserts a new clause 4.7A which sets a due date for the payment of levy by producers, other than integrated enterprise operators, who are liable to pay levy prior to the commencement of this clause. The due date is 21 days after the commencement of the clause. This removes any ambiguity that a person who purchases laying chickens from an intermediary and incurs a levy liability must pay levy to the intermediary by a due date.

Item [3] inserts an additional subclause in clause 4.10 which requires a producer referred to in new clause 4.7A to submit a levy return.

Item [4] amends clause 4.11 to require a producer to whom clause 4.7A applies to submit a levy return within 28 days of the payment due date in clause 4.7A.

Item [5] inserts a new clause 4.13 setting out the information that must be included in a return submitted by a producer to whom clause 4.7A applies.

Best Practice Regulation – Preliminary Assessment

This Preliminary Assessment form will help you assess whether a regulatory proposal will have a potential impact on business and individuals or the economy and whether further analysis may be required. This form will guide you through the compliance cost impacts and other impacts of your proposal. You should consult the *Best Practice Regulation Handbook* for more information about the requirements for developing regulatory proposals. All regulatory and quasi-regulatory proposals are subject to these requirements, which are mandated by the Australian Government.

While self assessment is an option at this stage of the policy development process, you are strongly encouraged to contact the Office of Best Practice Regulation (OBPR) to confirm your Preliminary Assessment and for advice and support. If you incorrectly assess the impact of your proposal it may not be allowed to proceed to the decision-maker. Contacting OBPR early in the policy development process will help departments and agencies progress the proposal through decision making forums, such as Cabinet, in a timely manner; ensure full compliance with the Governments requirements; and avoid the need for post- implementation reviews within one to two years. Note that the preliminary assessment should be informed by consultation with stakeholders.

Department of Agriculture, Fisheries and Forestry

Egg Levy - Primary Industries Levies and Charges Collection Regulations
1991

The proposed change will declare laying chickens as 'prescribed goods' for the purpose of the egg levy.

Section 1: Business Compliance Costs

The following checklist will help you identify if the proposal has the potential to increase compliance costs.

Will businesses incur costs when they are required to report certain events?

☐ Yes* ☒

No*

Will costs be incurred by business in keeping abreast of regulatory requirements?

☐ Yes ☒

No

Are costs incurred in seeking permission to conduct an activity?

☐ Yes ☒

No

Will businesses need to purchase materials, equipment, or external services?

☐ Yes ☒

No

Will businesses need to keep records?

☐ Yes ☒

No

Will businesses incur costs when cooperating with audits or inspections?

☐ Yes ☒

No

Will businesses incur costs when producing documents?

☐ Yes ☒

No

Will businesses incur costs from other changes to their procedures or practices?

☐ Yes ☒

No

Are there any other compliance costs, including indirect costs or impacts on intermediaries such as accountants, lawyers banks or financial advisers?

☐ Yes ☒ No

- ◆ If you have answered 'no' to each of these questions there would appear to be no compliance costs to business. You will need to include an explanation of the reason for this assessment at the end of this form. You can now proceed to Section 2.
- ◆ If you have answered 'yes' to any of these questions, you will need to determine if business compliance costs are low. In general, compliance costs to business would be low when only a few businesses are affected and the costs are negligible or trivial.

For example:

- changes to regulation that are machinery in nature, involving technical changes which will not have an appreciable impact on business and are consistent with existing policy (such as indexation);
- there would be a very small initial one-off cost to business and no ongoing costs.

Proposals which have a broad impact (that is, affect a large number of businesses), or which involve a cost per business which is not negligible (in relation to the size of businesses involved), would not be considered to generate low compliance cost impacts. In these cases departments and agencies should contact OBPR which will determine the level of regulatory impact assessment required.

Will this proposal have low compliance costs on business?

☐ Yes* ☐ No*

- ◆ If you answered 'yes' to this question you will need to include an explanation of the reason for this assessment at the end of this form. You can now proceed to Section 2. If you are unsure, contact the OBPR.
- ◆ If you have answered 'no' to this question or are uncertain, please contact the OBPR for advice on the appropriate level of analysis and further information.

Section 2: Other impacts on business and individuals or the economy

You should also identify any other potential impacts on business and individuals or the economy which require or encourage businesses to alter their behaviour.

Regulation has an impact on business and individuals if it imposes a cost or confers a benefit. This includes proposals that restrict or promotes competition. These impacts may be positive or negative, financial or non-financial, direct or indirect and may be market or non-market impacts.

The following checklist will help you to assess whether a proposal has a potential impact on business and individuals or the economy.

Will the proposal:

Potentially affect the number and range of businesses in an industry?

☐ Yes ☒ No

For example: Change the ability of businesses to provide a good or service;
Change the requirements for a licence, permit or authorisation process as a condition of operation;
Affect the ability of some types of firms to participate in public procurement;
Significantly alter costs of entry or exit to an industry; or
Change geographic barriers for businesses.

Potentially change the ability of businesses to compete?

☐ Yes* ☒ No*

For example: Control or substantially influence the price at which a good or service is sold;
Alter the ability of businesses to advertise or market their products;
Ban certain types of products or business practices;
Set significantly different standards for product/service quality; or
Significantly alter the competitiveness of some industry sectors.

Potentially alter a business's incentives to compete?

☐ Yes ☒ No

For example: Create a self-regulatory or co-regulatory regime;
Impact on the mobility of customers between businesses;
Require/encourage the publishing of data on company outputs/price, sales/cost; or
Exempt an activity from general competition law.

Potentially impact on consumers?

☐ Yes ☒ No

For example: Alter the choices available to consumers;
Affect the quality of consumer products or services;
Create or remove restrictions on access to a product;
Promote or restrict information dissemination to consumers; or
Add to or reduce the complexity of consumer products or services.

Potentially have any other impacts on business and individuals or the economy?

☐ Yes ☒ No

For example: Mandate payments from one party to another (excluding taxes);
Have environmental or social impacts (including distribution of resources);
Create or amend government cost recovery arrangements;
Impact on Australia's international capital flows or trade;
Impact on mobility of labour;
Impact on resource allocation, saving or investment;
Transfer risk between business, individuals and government; or
Impose any other financial costs.

- ◆ If you have answered 'no' to each of these questions, you will need to include an explanation of the reason for this assessment at the end of this form.
- ◆ If you answered 'yes' to any of these questions, you will need to determine if other impacts are low. In general, impacts would be low when only a few businesses are affected and the impacts are negligible or trivial.

Will this proposal have low other impacts on business and individuals or the economy?

☐ Yes* ☐ No*

- ◆ If you answered 'yes' to this question, you will need to include an explanation of the reason for this assessment at the end of this form. You can now proceed to Section 3. If you are unsure, contact the OBPR.
- ◆ If you answered 'no' to this question or are uncertain, please contact the OBPR for advice on the appropriate level of analysis and further information.

Section 3: Rationale for Your Assessment of Low or No Impact

You should provide an explanation for why you have assessed business compliance costs as low or nil and why you have assessed other impacts on business and individuals or the economy as low or nil.

The proposal would amend the egg levy part of the Primary Industries Levies and Charges Collection Regulations 1991 so that laying chickens would be declared as 'prescribed goods' for the purpose of the egg levy. Whilst the levy is imposed on eggs produced in Australia, the levy is calculated on the the number of laying chickens used to produce eggs. Levy liability rests with an egg producer and is payable to the Commonwealth in two ways. If an egg producer hatches laying chickens and then moves them into an egg production facility, the producer pays levy direct to the Commonwealth. Where an egg producer buys laying chickens from a hatchery, the producer must pay levy to the hatchery and then the hatchery must pay that amount to the Commonwealth. The regulations set due dates for payment in each scenario. A hatchery is only required to make a payment once they have received levy from a producer. The practical effect of the proposed change will be to clarify the application of the due date for hatcheries that deal in prescribed goods and are required to pay levy. The amendment would not change liability incurred by levy payers.

Section 4: Next Steps

If you are uncertain about the impact of a proposal, you should forward of copy of this preliminary assessment, along with a clear outline of the proposal and its possible impacts, to the OBPR, which will determine the level of analysis required.

You should keep this form and any supporting documents, including a clear outline of the proposal to which it relates and its impacts, on file and send a copy to the Best Practice Regulation Coordinator in your department or agency.