

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT 2013 No. 158

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

Primary Industries (Excise) Levies Act 1999

Primary Industries (Excise) Levies Amendment (Bananas) Regulation 2013

Legislative Authority

Section 8 of the *Primary Industries (Excise) Levies Act 1999* (Levies Act) provides that the Governor-General may make regulations allowing 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. Clause 2, Part 2, Schedule 27 to the Levies Act provides for the *Primary Industries (Excise) Levies Regulations 1999* (Levies Regulations) to impose levies on horticultural products.

The national coordinator of the government-industry partnership for plant biosecurity in Australia is Plant Health Australia (PHA). Schedule 15 to the Levies Regulations imposes special levies, including PHA and Emergency Plant Pest Response (EPPR) levies. 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 of the Levies Regulations also provides that PHA has the meaning given by the *Plant Health Australia (Plant Industries) Funding Act 2002*. The rate of PHA levy is fixed by the Levies Regulations.

The Emergency Plant Pest Response Deed (EPPRD) is a formal agreement between the Australian Government, all state and territory governments, PHA and plant industry signatories on how to manage the costs and responsibilities for responding to an emergency plant pest outbreak. Subclause 1 of Regulation 3 of the Levies Regulations provides that EPPR levy has the meaning given by the *Plant Health Australia (Plant Industries) Funding Act 2002*. Section 3 of the *Plant Health Australia (Plant Industries) Funding Act 2002* provides that an EPPR levy is those imposed by regulations under Schedule 27 to the Levies Act and that is described in those regulations as “EPPR levy”. The rate of EPPR levy is fixed by the Levies Regulations.

Subclause 27.1 of Schedule 15 to the Levies Regulations provides that bananas are leviable horticultural products. The levies are payable by the producers of the products.

Purpose

The *Primary Industries (Excise) Levies Amendment (Bananas) Regulation 2013* (Regulation) reduces the existing rate of marketing levy for bananas from 1.16 to 1.1497 cents per kilogram of bananas. It also establishes a new PHA levy for bananas at 0.0103 of a cent per kilogram of bananas and a new EPPR levy for bananas set at zero.

Background

Levies are introduced and administered by the Australian Government at the request of industry. Horticultural products levies are collected by the Department of Agriculture, Fisheries and Forestry (DAFF) Levies, which disburses the funds collected from the research and development (R&D) and marketing levies to Horticulture Australia Limited (HAL), or from the PHA and EPPR levies to PHA.

HAL was formed in 2001 and is the declared Industry Services Body under Section 9 of the *Horticulture Marketing and Research and Development Services Act 2000*. HAL is the industry owned rural R&D corporation for the Australian horticulture sector. HAL's purpose is to be accountable for the efficient and effective investment of industry and government funds in R&D and industry investment in marketing. HAL's funding is derived from a combination of statutory industry levies (from grower to R&D and marketing), voluntary contributions (from grower associations, commercial enterprises, researchers and individuals), and Australian Government matching funds for eligible R&D, as well as other sources such as royalties and investments.

PHA is a Corporations Law company that was established in April 2000. Its role is to facilitate a national approach to enhance Australia's plant health status through effective partnerships between governments and industry on matters such as pest preparedness and prevention, and emergency response and management. Industry member's financial contributions to PHA are set under the *Plant Health Australia (Plant Industries) Funding Act 2002*. Industries can elect to use levies to pay their membership fees to PHA.

Industry signatories to the EPPRD must nominate how they will meet their financial liabilities, which is usually done by establishing an EPPR levy. An EPPR levy is usually set to zero and only activated, if necessary, following an agreed nationally cost-shared response to an emergency plant pest incident affecting the banana industry. Under the EPPRD, the Commonwealth Government may initially meet an industry's cost-sharing obligations. Industry is then required to pay back the Commonwealth and will negotiate a time period to repay the debt (usually within 10 years). The rate for the response levy will be calculated based on the time period. Once the debt has been paid, the EPPR levy is returned to zero.

The Australian Banana Growers' Council (ABGC) is the national representative industry body for bananas in Australia. A levy is payable on bananas produced and sold in Australia, with the exception of those meeting the conditions specified under Regulation 27.2 of the Levies Regulations. The Minister for Agriculture, Fisheries and Forestry received a request dated 23 January 2013 from ABGC to decrease its existing marketing levy for bananas and introduce new PHA and EPPR levies for bananas.

ABGC is a member of PHA and a signatory to the EPPRD. HAL is the declared relevant industry services body for bananas. HAL has consulted with ABGC and has written to DAFF expressing its support for the amendments.

Impact and Effect

The amendments enable the national peak representative industry body for bananas, ABGC to meet its financial contribution to PHA. The Regulation redistributes a proportion of the marketing levy to PHA levy in relation to bananas and establishes a zero-rated EPPR levy for

bananas. It does not change the overall amount of levy payable by the producers of bananas. The EPPR levy will be activated if necessary following a response to an emergency plant pest incident affecting the banana industry. PHA membership and the ability to remain a signatory of the EPPRD, provide valuable protection for the producers of bananas. An activated EPPR levy would enable the industry, as a signatory to the EPPRD, to meet its financial liabilities for an emergency response under the EPPRD.

Consultation

Subclauses 6(4) and 6(11) of Schedule 15 to the Levies Act provide that, before the Governor-General makes regulations for the purpose of prescribing a marketing levy or levy destined for other purposes, the Minister must take into consideration any relevant recommendation made to the Minister by the industry services body. HAL is the declared industry services body for bananas at the time of making the proposed Regulation (Clause 1 of Schedule 15 to the Levies Act and Section 9 of 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 Levies Regulations. A declared industry services body such as HAL is an industry owned corporation, partly funded by the Australian Government. Whereas a peak industry body such as ABGC represents only the interests of the producers of bananas. Accordingly, the Minister has considered the recommendation made by HAL in consultation with ABGC in making the Regulation.

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

ABGC advised DAFF in its proposal that the proposed amendments had been extensively canvassed to its members through meetings, a media release and publications on its website and in industry magazine *Australian Bananas* and e-bulletin *Banana Growers*. The proposed amendments were supported by the majority of industry members. There were no reported objections from industry members in the six weeks following lodgement of the proposal by ABGC. HAL has indicated its support for the amendments in a correspondence dated 31 October 2012.

DAFF has considered the information provided by ABGC and is of the view that it satisfies the requirements of the Levy Principles and Guidelines, including that reasonable attempts were made to provide levy payers with opportunities to raise any concerns or objections. DAFF is of the view that the provided evidence sufficiently demonstrates majority agreement for the proposed amendments.

The Office of Best Practice Regulation was consulted in the preparation of the Regulation. The OBPR has advised that no Regulation Impact Statement is required for the amendments (OBPR Reference Number 14739).

The Department of the Treasury was consulted on the financial implications of the proposed amendments and has confirmed that there is no net impact to the Commonwealth.

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 (Excise) Levies Amendment (Bananas) Regulation 2013*

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Primary Industries (Excise) Levies Amendment (Bananas) Regulation 2013*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 October 2013.

Section 3 – Authority

This section provides for the Regulation to be made under the *Primary Industries (Excise) Levies Act 1999*.

Section 4 – Schedule(s)

This section provides for Schedule 1 to amend the *Primary Industries (Excise) Levies Regulations 1999* (Levies Regulations).

Schedule 1 – Amendments of the *Primary Industries (Excise) Levies Regulations 1999* (Levies Regulations)

Item 1 amends clause 27.3 of Schedule 15 to the Levies Regulations by substituting the rate of marketing levy for bananas of 1.16 with 1.1497 cents per kilogram of bananas. This represents a reduction of 0.0103 of a cent per kilogram.

Item 2 inserts two new clauses 27.6 and 27.7 to the end of Part 27 of Schedule 15 to the Levies Regulations.

The new clause 27.6 provides for a new Plant Health Australia (PHA) levy for bananas. The new rate of PHA levy is 0.0103 of a cent per kilogram of bananas and payable by producers of the bananas.

The new clause 27.7 provides for a new Emergency Plant Pest Response (EPPR) levy for bananas. The new rate of EPPR levy for bananas is ‘nil’ and payable by producers of the bananas.

ATTACHMENT

Statement of Compatibility with Human Rights

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

Primary Industries (Excise) Levies Amendment (Bananas) Regulation 2013

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 (Excise) Levies Amendment (Bananas) Regulation 2013 amends the *Primary Industries (Excise) Levies Regulations 1999* by:

- substituting the rate of marketing levy for bananas of 1.16 with 1.1497 cents per kilogram of bananas,
- inserting a new clause providing for a new Plant Health Australia (PHA) levy for bananas of 0.0103 of a cent per kilogram of bananas, which is payable by producers of the bananas, and
- inserting a new clause providing for a new Emergency Plant Pest Response (EPPR) levy for bananas at a rate of ‘nil’, which is payable by producers of the bananas.

The amendments enable the Australian Banana Growers’ Council to meet its annual membership subscription to PHA. The overall amount of levies collected will not change as the amendments redistribute a proportion of the existing marketing levy to a new PHA levy and introduce a new zero-rated EPPR levy for bananas.

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