EXPLANATORY STATEMENT

Select Legislative Instrument No. 56, 2014

Issued by Authority of the Minister for Agriculture

*Primary Industries Levies and Charges Collection Act 1991*

*Primary Industries Levies and Charges Collection Amendment (Mushrooms) Regulation 2014*

**Legislative Authority**

Section 30 of the *Primary Industries Levies and Charges Collection Act 1991* (the Act) provides 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.

Schedule 22 to the *Primary Industries Levies and Charges Collection Regulations 1991* sets out for various leviable horticultural products: details for payment of levy and other collection matters.

**Purpose**

The purpose of the Regulation is, for all *agaricus* mushrooms produced in Australia, to adjust the pro rata rate of mushroom levy payable by a grower that will produce or purchase 370 000 kilograms (kg) or more of mushroom spawn in a levy year (that is the upper threshold exemption) from $66 600 to $133 200.

The reason for the change is to ensure any mushroom grower paying the levy monthly will pay their full levy liability at the rates applying from 1 July 2014 under the *Primary Industries (Excise) Levies Amendment (2014 Measures No. 1) Regulation 2014* (which is also scheduled for consideration by the Federal Executive Council), thereby preserving equity of payment between all mushroom growers (levy payers).

Growers producing or purchasing 370 000 kg or more of mushroom spawn in a levy year pay their levies monthly at a pro rata rate (one twelfth of the levy payable on 370 000 kg). If this payment method (that is monthly at a pro rata rate) was not available such a grower would end up paying the full levy liability in the first half of the levy year, causing the grower unnecessary cash-flow hardship. Other mushroom growers usually pay their full liability of levy quarterly.

**Background**

The Australian Mushroom Growers’ Association (AMGA) is the peak industry body for *Agaricus* mushrooms (i.e. Brown and White or Common mushroom varieties) in Australia. In April 2012 the Australian Government received a submission from AMGA requesting the increase in the existing rates of research and development (R&D) and marketing levies on mushrooms.

**Impact and Effect**

In line with the increased marketing and R&D levies on mushrooms, monthly payments should double, providing funds for industry identified priority marketing and R&D activities.

An upperthreshold was placed on spawn with the introduction of the mushroom levy on 1 January 2002, upon which levy is paid by any one mushroom grower in a levy 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.

However, since 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. Consequently, in July 2011 the upper threshold was increased to 370 000 kilograms of spawn produced, which equated to ME’s ‘equivalent’ proportion of current total national spawn production. In monetary terms at current rates of production ME pays $799 200 in levy each levy year.

ME remains the only mushroom grower to trigger the upper threshold. In line with the increased marketing and R&D levies on mushrooms, monthly payments should double, providing funds for industry identified priority marketing and R&D activities meaning that ME would pay $1.5984 million in levy each levy year.

**Consultation**

The Department consulted the departments of the Prime Minister and Cabinet, Treasury, and Finance in preparing the Regulation and the other Regulations associated with amendments to the levy on mushrooms. The Department also was in contact with AMGA throughout the period 2012 to 2014 to ensure the requested levy changes were still appropriate and needed.

The Office of Best Practice Regulation (OPBR) approved a Regulation Impact Statement (ID 14183). A copy of the Regulation Impact Statement is available from OBPR’s website at ris.dpmc.gov.au/category/primary-industries.

AMGA undertook a thorough consultation process for the new levy rates on mushroom spawn to fund research and development, and marketing. More detail on the wider consultation process undertaken for this mushroom levy proposal is in the RIS referred to above.

**Details/Operation**

Details of the Regulation are set out in Attachment A.

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 B.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation is to commence on 1 July 2014.

**Attachment A**

**Details of the *Primary Industries Levies and Charges Collection Amendment (Mushrooms) Regulation 2014***

Section 1 – Name of Regulation

This Section provides for the title of *Primary Industries Levies and Charges Collection Amendment (Mushrooms) Regulation 2014*.

Section 2 – Commencement

This Section provides for the Regulation to commence on 1 July 2014.

Section 3 – Authority

This Section provides the legislative authority for making the Regulation as the *Primary Industries Levies and Charges Collection Act 1991.*

Section 4 – Schedule(s)

This Section provides for the *Primary Industries Levies and Charges Collection Regulations 1991* to be amended as set out in Schedule 1.

Schedule 1 – Amendments

**Item 1** amends 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 will 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 $133,200. The term *expected fraction* is defined in subclause 18.8C (3) as being 370,000 divided by 12 multiplied by the number of months that have elapsed in the levy year.

**Attachment B**

**Statement of Compatibility with Human Rights**

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

***Primary Industries Levies and Charges Collection Amendment (Mushrooms) Regulation 2014***

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 purpose of the Regulation is to adjust the monthly payment amount of levy payable open to growers that will produce or purchase 370 000 kilograms or more of mushroom spawn in a levy year (i.e. the upper threshold exemption). The reason for the change is to ensure any mushroom grower paying levy monthly will pay their full levy liability at the rates applying from 1 July 2014, thereby preserving equity of payment between all mushroom growers (levy payers).

**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. Barnaby Joyce MP**

**Minister for Agriculture**