

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and
Minister for Agriculture and Water Resources

Dairy Produce Act 1986
Dairy Produce Amendment (Dairy Service Levy Poll) Act 2016

Dairy Produce (Dairy Service Levy Poll) Instrument 2016

Legislative Authority

The *Dairy Produce Amendment (Dairy Service Levy Poll) Act 2016* (the Amendment Act) repealed Division 3 of Part II of the *Dairy Produce Act 1986* (the Dairy Produce Act) under which the *Dairy Produce (Dairy Service Levy) Regulations 2006* were made, and substituted a new section 9 to make provision for a legislative instrument.

Purpose

The purpose of the *Dairy Produce (Dairy Service Levy Poll) Instrument 2016* (the Instrument) is to:

- require the industry services body to establish a levy poll advisory committee to consider the levy rate every five years
- require the industry services body to hold a levy poll if a variation to the rate is recommended by the advisory committee
- include a mechanism for Group A members (levy payers) of the industry services body to request the body conduct a levy poll if they disagree with the levy poll advisory committee's decision not to convene a levy poll
- detail the way in which the industry services body must conduct a levy poll
- require the industry services body to make recommendations to the Minister following a levy poll.

Background

The Australian dairy industry has around 6100 dairy levy payers (dairy farmers). Under the *Dairy Industry Services Reform Act 2003*, Dairy Australia is the declared industry services body for the Australian dairy industry. In accordance with the *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999*, dairy farmers pay a dairy service levy to Dairy Australia based on the fat and protein content of milk. The levy funds research and development and promotion and marketing programs. Under the *Dairy Produce (Dairy Service Levy Poll) Regulations 2006* (now repealed), Dairy Australia was required to hold a poll every five years to seek the views of levy payers on whether changes should be made to the rate of the dairy service levy.

Following the last levy poll in 2012, the dairy industry expressed concern about the regulatory and financial burden associated with holding a levy poll every five years, regardless of whether a change in the levy rate was being sought. In 2015, the Australian Dairy Farmers and Dairy Australia commissioned an independent review of the dairy levy poll process. The review recommended simplifying the process.

Impact and Effect

The Instrument provides Dairy Australia with a more flexible, streamlined process it must follow in considering the levy rate every five years. The Instrument improves efficiency and cost effectiveness. A dairy levy poll will only be held if a change in levy rate is considered. The process outlined in the Instrument is deregulatory, and is consistent with the levy poll processes of other agricultural industries such as sugar, beef, horticulture and wine.

The changes may provide Dairy Australia with savings of up to \$1 million every five years which could be re-directed towards research and development and marketing and promotion activities for the benefit of the dairy industry, including dairy farmers.

Consultation

In September 2015, the Australian Dairy Farmers, with the support of Dairy Australia and state dairy farming organisations, conducted a three-month program of national consultation regarding the proposed changes to the dairy levy poll process following the review. Every levy payer was contacted at least once throughout the consultation period and given the chance to provide feedback on the proposed changes. An information pack was sent to 6288 levy payers; 30 presentations were held with 1221 dairy farmers in attendance; telephone conversations with 785 individual levy payers were conducted; and a vote on the proposed changes was held – with 89.95 per cent of levy payers who voted, casting a ‘yes’ vote.

Following the industry consultation and ‘yes’ vote by levy payers, the Minister for Agriculture and Water Resources advised Dairy Australia the government was satisfied with the industry consultation. The *Dairy Produce Amendment (Dairy Service Levy Poll) Act 2016* received Royal Assent on 23 March 2016, and made provision for a legislative instrument in relation to the dairy service levy poll.

The department has consulted extensively with Dairy Australia and the Australian Dairy Farmers in drafting of the Instrument to ensure that it accurately details the changes that dairy farmers voted ‘yes’ for.

The Office of Best Practice Regulation was consulted and advised that a regulation impact statement was not required (OBPR ID 19580).

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument 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 *Dairy Produce (Dairy Service Levy Poll) Instrument 2016*

Part 1—Preliminary

Item 1 – Name

This section provides for the name of the Instrument to be the *Dairy Produce (Dairy Service Levy Poll) Instrument 2016*.

Item 2 – Commencement

This section provides for the Instrument to commence on the day after the instrument is registered.

Item 3 – Authority

This section provides for the Instrument to be made under Section 9 of the *Dairy Produce Act 1986*.

Item 4 – Definitions

This section sets out the definitions for terms used in the Instrument.

This section notes that at the time the Instrument commences the:

- industry representative body (IRB) is the Australian Dairy Farmers
- industry services body (ISB) is Dairy Australia
- industry manufacturing representative body (IMRB) is the Australian Dairy Products Federation.

Item 5 – Levy options

This section sets out the definition for a levy option.

Item 6 – Levy review cycles

This section defines: the first levy review cycle—beginning on commencement of the Instrument; and a levy review cycle.

This section requires that Dairy Australia and the Levy Poll Advisory Committee must each endeavour to ensure that the period of the levy review cycle does not exceed five years.

Part 2—Levy Poll Advisory Committee

Part 2 requires Dairy Australia establish a Levy Poll Advisory Committee to consider the levy rate every five years.

Item 7 – Establishment and functions

This section requires Dairy Australia to establish a Levy Poll Advisory Committee and describes the functions of the Advisory Committee—including, but not limited to, deciding whether there should be a change in the rate of the dairy service levy, and if so, the nature of the change.

Item 8 – Membership

This section requires the membership of the Levy Poll Advisory Committee comprise:

- a chair
- two representatives of the Australian Dairy Farmers
- two representatives of Dairy Australia
- a representative of the Australian Dairy Products Federation
- not less than five, or more than ten, dairy service levy payers.

This section requires Dairy Australia appoint: the Chair; two representatives each of the Australian Dairy Farmers and Dairy Australia; and a representative of the Australian Dairy Products Federation. The Chair must be recommended jointly by the President of the IRB and the Chair of the ISB. These members are to be known as the initial members. Dairy Australia must appoint one of the initial members to be the Deputy Chair of the Levy Poll Advisory Committee. The Deputy Chair must be recommended jointly by the President of the IRB and the Chair of the ISB. The Deputy Chair may perform the functions of the Chair at a meeting or meetings if the Chair is unavailable. This section also provides for a substitute to perform the functions of an initial member other than the Chair at a meeting or meetings.

This section requires the Chair to invite registered entities to nominate individuals for appointment as dairy service levy payers. These members are to be known as the additional members.

The initial members must appoint additional members from among the individuals nominated in response to the invitation given by the Chair. The initial members must seek to ensure that the membership of the Levy Poll Advisory Committee includes a broad representation of dairy service levy payers.

This section also provides that members of the Levy Poll Advisory Committee may serve for more than one levy review cycle.

Item 9 – Meetings

This section provides for the Chair of the Levy Poll Advisory Committee to convene such meetings of the Advisory Committee as are necessary to perform its functions. This section specifies: the number of members to constitute a quorum; that minutes must be kept of the meetings; that decisions must be taken at meetings or by circulation by the Chair of a document containing the proposed decision; and that decisions must be agreed by a majority of the members of the Levy Poll Advisory Committee.

Part 3—Requests for levy polls

Part 3 requires Dairy Australia to hold a levy poll if a variation to the rate is recommended by the Levy Poll Advisory Committee.

Part 3 includes a mechanism for Group A members of Dairy Australia to request the body conduct a levy poll if they disagree with the Levy Poll Advisory Committee's decision not to convene a levy poll.

Division 3.1 — Who may request levy polls etc

Item 10 – Who may request levy polls

This section requires that a request for a levy poll must be made by the Levy Poll Advisory Committee.

Item 11 – Form of a request

This section requires that a request for a levy poll by the Levy Poll Advisory Committee must be made in writing to Dairy Australia; must set out the levy options to be presented in the levy poll; and must be accompanied by a reasoned statement as to the levy option recommended by the Advisory Committee.

Division 3.2 — When levy poll may or must be requested

Item 12 – Levy poll to be requested only in accordance with this Part

This section specifies that the Levy Poll Advisory Committee:

- may request a levy poll after receiving recommendations from the Australian Dairy Farmers and Dairy Australia
- must request a levy poll after being presented with a petition by Dairy Australia
- may not otherwise request a levy poll.

Item 13 – Recommendations of the IRB and the ISB

This section requires the Australian Dairy Farmers and Dairy Australia to jointly make a recommendation to the Levy Poll Advisory Committee about whether there should be a change in the dairy service levy and, if so, the nature of that change. If the Australian Dairy Farmers and Dairy Australia are unable to agree on a recommendation to be made jointly, they must each make such a recommendation to the Advisory Committee.

This section sets out what form the recommendation must take and what the Australian Dairy Farmers and Dairy Australia must take into account in deciding what recommendation to make.

Item 14 – LPAC may request levy poll after receiving recommendation

This section requires the Levy Poll Advisory Committee to decide whether to request a levy poll, and to inform Dairy Australia of the decision in writing. This section sets out what the Advisory Committee must take into account in making the decision.

This section requires Dairy Australia to hold a levy poll if a variation to the rate is recommended by the Levy Poll Advisory Committee.

This section requires Dairy Australia to inform the Minister in writing of the decision of the Levy Poll Advisory Committee.

Item 15 – Notification of the LPAC’s decision to registered entities

This section specifies that Dairy Australia must notify registered entities in writing of the Levy Poll Advisory Committee’s decision whether to request a levy poll within 14 business days.

Item 16 – Petition for request of levy poll

This section provides a mechanism for Group A members of Dairy Australia to request Dairy Australia conduct a levy poll if they disagree with the Levy Poll Advisory Committee's decision not to convene a levy poll.

This section requires that the petition must propose a levy option other than a proposal for no change, and be lodged with Dairy Australia in writing within 75 days of being notified of the Levy Poll Advisory Committee's decision. This section requires the petition be supported by Group A member signatories who together represent at least 15 per cent of the total amount of dairy service levy paid.

Example 1:

Mr Smith—a fictitious dairy service levy payer—receives written notification from Dairy Australia that a Levy Poll Advisory Committee has decided there should be no change in the dairy service levy rate. Mr Smith disagrees with the with the Levy Poll Advisory Committee's decision not to convene a levy poll. Mr Smith prepares a petition proposing a 3 per cent decrease in the prescribed milk fat rate and protein rate of the dairy service levy. Mr Smith secures the signatures of fellow dairy farmers, who are also Group A members of Dairy Australia. The signatures, when taken together, represent 15 per cent of the total amount of the dairy service levy that was paid in the previous financial year. Mr Smith lodges the petition, in writing, with Dairy Australia within 75 days of being notified of the Levy Poll Advisory Committee's decision.

This section requires Dairy Australia to put a petition (that meets the requirements), in the form of a resolution, to a vote at a general meeting of the body.

Example 2:

Following on from Example 1, Dairy Australia receives a petition from Mr Smith. The petition meets the requirements as described in the Instrument. Dairy Australia puts the petition, in the form of a resolution, to a general meeting. The resolution is passed.

If the resolution is passed, this section requires Dairy Australia give the petition and results of the vote to the Levy Poll Advisory Committee within 14 business days.

This section also requires Dairy Australia notify the Minister if a petition is, or is not, lodged.

Item 17 – LPAC must request levy poll after being presented with petition

Under this section, the Levy Poll Advisory Committee must request a levy poll after being presented with a petition by Dairy Australia under section 16 as soon as reasonably practicable. A request for the levy poll must set out the levy option proposed by the petition, and may set out other levy options.

Example 3:

Following on from Examples 1 and 2, the Levy Poll Advisory Committee receive, from Dairy Australia, a petition and the results of the vote at the general meeting. The Advisory Committee consider whether other levy options should be put to a poll. The Advisory Committee make a written request for a levy poll to Dairy Australia. The Advisory Committee's request sets out the option proposed by the (Mr Smith's) petition and one other option. It is accompanied by a reasoned statement outlining the levy option recommended by the Levy Poll Advisory Committee.

Part 4—Pre-poll consultations

Item 18 – ISB must plan and conduct pre-poll consultations in accordance with this Part

This section requires Dairy Australia to plan and conduct consultations with registered entities before it conducts a levy poll.

Item 19 – Preparation of consultation plan

This section requires the Dairy Australia, in consultation with the Australian Dairy Farmers, prepare a written plan for the conduct of the pre-poll consultations and submit a draft to the Levy Poll Advisory Committee and Department of Agriculture and Water Resources for review and comment. Dairy Australia must take into account any comments provided by the Advisory Committee and department.

Item 20 – Conduct of pre-poll consultations

This section requires Dairy Australia to conduct the pre-poll consultations in accordance with the written plan (section 19).

Part 5—Conduct of levy polls

Part 5 details the way in which Dairy Australia must conduct a levy poll.

Division 5.1—Cut-off and return days

Item 21 – Cut-off and return days for levy polls

This section requires Dairy Australia to determine a cut-off day and a return day. This section stipulates the timing conditions for the cut-off day.

Item 22 – Changing return days

This section applies if it becomes apparent that one or more eligible voters will be unable to send their ballot papers to the returning officer, so that they are received by the return day. This sections allows Dairy Australia to determine another day to be the return day, and prescribes how Dairy Australia must notify eligible voters of the change in return day.

Division 5.2—Eligibility to vote and voting entitlement

Item 23 – Determination of eligibility and voting entitlement

This section requires Dairy Australia to determine, as at the cut-off day: if an entity is eligible to vote in the levy poll; and the voting entitlement of each eligible entity. If, before the cut-off day, an entity dies, Dairy Australia must determine whether a trustee of the entity's estate is eligible to vote.

Item 24 – Determining eligibility to vote

This section provides guidance to support Dairy Australia in determining: if an entity is eligible to vote; and if a trustee of the estate of an entity who dies before the cut-off day is eligible to vote.

Item 25 – Determining voting entitlement

This section requires Dairy Australia to determine the voting entitlement of each eligible voter. This section sets out the voting entitlement Dairy Australia must allocate to an entity and to a trustee of the estate of an entity.

Item 26 – Information to be used for making determinations

This section permits Dairy Australia to use any information available to it to make a determination under section 24 or 25.

Item 27 – Notice about voting entitlement

This section requires Dairy Australia, within 15 business days of the cut-off day, to send a notice to each eligible voter about their voting entitlement. This section prescribes the information that must be contained in the notice.

Item 28 – Register

This section requires Dairy Australia maintain an electronic register to be known as the Register of eligible voters, and stipulates the data the register must contain. This section requires that if, at any time, Dairy Australia becomes aware the information recorded is not up to date or there is an error, Dairy Australia must update the register and/or rectify the error as soon as practicable.

Division 5.3 – Form of the levy poll

Item 29 – Form of the levy poll

This section requires that if there are two or more levy options, the ballot paper present each of the levy options and provide for optional preferential voting on the levy options.

This section requires that if there is only one levy option, the ballot paper may instead present that levy option and provide for a ‘yes’ or ‘no’ vote on that levy option.

Item 30 – Poll procedure

This section requires Dairy Australia set out in a document the procedure that will be used to conduct the levy poll and count the votes. This section sets out the requirements for the poll—including for electronic voting.

Item 31 – Ballot paper

This section requires Dairy Australia prepare a ballot paper consistent with section 29 and the poll procedure document; and prescribes information that must be set out on the ballot paper.

Item 32 – Voting instructions

This section requires Dairy Australia explain to voters in a document:

- how the poll will be conducted
- how votes will be counted
- what the voter must do to cast a valid vote.

Item 33 – Information memorandum

This section prescribes the detail Dairy Australia must include in the information memorandum.

Division 5.4 — Conducting the levy poll

Item 34 – Material to be sent to eligible voters

This section prescribes the material that Dairy Australia must send to each eligible voter no later than five weeks before the return day for a levy poll.

Item 35 – Minister to approve ballot paper etc

This section requires that, one calendar month before the cut-off day, Dairy Australia submit the ballot paper, voting instructions and information memorandum to the Minister for approval. This section prescribes the conditions that must be met before the Minister can approve the draft documents.

Item 36 – Appointment of returning officers

This section requires Dairy Australia appoint an individual with relevant experience to be the returning officer for each levy poll. Dairy Australia may appoint assistant returning officers. This section specifies the eligibility criteria for the returning officer and assistant returning officer/s.

Item 37 – Conduct of levy poll and declaration of result

This section requires the returning officer conduct the levy poll in accordance with the Instrument and the poll procedure document. This section details when the returning officer must: declare the levy option to be recommended to the Minister; and report to Dairy Australia on the conduct of the levy poll.

Item 38 – Preservation of ballot papers

This section requires the returning officer keep all of the ballot papers and any documents relating to the levy poll in a secure place until the second anniversary of the return day, and destroy the ballot papers and documents as soon as practicable after the anniversary.

If, before the anniversary, a person makes an application for an order of review, the returning officer must not destroy the ballot papers and documents before the day when the application is finally determined, but must destroy the ballot papers and documents as soon as practicable after that day.

Division 5.5—Results of levy polls

Item 39 – Summary of results of levy poll to be sent to eligible voters

This section requires Dairy Australia make available to each eligible voter a written summary of the results of the levy poll and specifies the timeframe for the requirement.

Part 6—Reconsideration and review of decisions

Division 6.1—Reconsideration of decisions

Item 40 – Application for reconsideration of determinations

This section permits an eligible voter to apply to Dairy Australia for reconsideration of its voting entitlement, and prescribes the information that must be provided in the application for reconsideration.

Item 41 – Reconsideration of determinations

This section requires Dairy Australia consider the application for reconsideration within 14 business days of receiving the application, and send the applicant a notice about the reconsidered decision. This section prescribes the detail the notice must contain.

Division 6.2—Review of decisions by Disputes Panel

Subdivision 6.2.1 – Disputes Panel

Item 42 – Disputes Panel

This section requires Dairy Australia establish a Disputes Panel for the levy poll within 14 business days after the cut-off day. The Disputes Panel must have at least three members. This section specifies the functions of the Disputes Panel and eligibility criteria for membership.

Subdivision 6.2.2—Review of reconsidered decisions

Item 43 – Application for review of reconsidered decisions

This section provides for an eligible voter who receives a notice under section 41(2)(a) to apply to the Disputes Panel for review of Dairy Australia’s reconsidered decision, and prescribes the information that must be provided in the application for review of the reconsideration decision.

Item 44 – Review of reconsidered decisions

This section requires the Disputes Panel consider an application for review of Dairy Australia’s reconsidered decision within 14 business days of receiving the application and send the applicant a notice about the application. The notice must state the reasons for the Disputes Panel’s decision.

Part 7—Recommendations to the Minister

Part 7 requires Dairy Australia to make recommendations to the Minister following a levy poll.

Item 45 – When the recommendations must be made

This section specifies the timeframe for when Dairy Australia must make recommendations about the amount of the dairy service levy to the Minister.

Item 46 – Results of the poll to accompany the recommendations

This section sets out the documentation that must accompany the Dairy Australia's recommendations to the Minister.

Part 8—Transitional provisions

Item 47 – LPAC for the first levy review cycle

This section applies for the first levy review cycle. The Levy Poll Advisory Committee established by Dairy Australia before the commencement of the Instrument is taken to be the Advisory Committee. The initial members appointed to the Levy Poll Advisory Committee by Dairy Australia before the commencement of the Instrument are taken to be initial members of the Advisory Committee. The additional members appointed by the initial members, meeting as the Levy Poll Advisory Committee, before the commencement of the Instrument are taken to be additional members of the Advisory Committee.

Item 48 – Recommendations of the IRB and the ISB for the first levy review cycle

This section applies for the first levy review cycle. If, before the commencement of the Instrument: the Australian Dairy Farmers and Dairy Australia made recommendations, whether separately or jointly, about whether there should be a change in the prescribed milk fat rate or the prescribed protein rate or both; and the recommendations were made to the Levy Poll Advisory Committee established by Dairy Australia; then, for the purposes of this Instrument, the recommendation is taken to have been made under section 13 to the Advisory Committee for the first levy review cycle.

Statement of Compatibility with Human Rights

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

Dairy Produce (Dairy Service Levy Poll) Instrument 2016

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 *Dairy Produce (Dairy Service Levy Poll) Instrument 2016* is to:

- require the industry services body to establish a levy poll advisory committee to consider the levy rate every five years
- require the industry services body to hold a levy poll if a variation to the rate is recommended by the advisory committee
- include a mechanism for Group A members of the industry services body to request the body conduct a levy poll if they disagree with the levy poll advisory committee's decision not to convene a levy poll
- detail the way in which the industry services body must conduct a levy poll
- require the industry services body to make recommendations to the Minister following a levy poll.

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
Deputy Prime Minister and Minister for Agriculture and Water Resources