

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

Primary Industries Levies and Charges Collection Act 1991

Primary Industries Levies and Charges Collection Amendment (Returns) Regulations 2018

The *Primary Industries Levies and Charges Collection Act 1991* (the Act) makes provision for the collection of primary industries levies and charges.

Section 30 of the Act provides that the Governor-General may make regulations necessary or convenient to carrying out or giving effect to the Act. Subsection 30(2)(c) provides for the making of regulations requiring producers of collection products, intermediaries in relation to such producers, and any other persons prescribed, to give returns or information for the purposes of the Act.

The Act sets out the collection and reporting arrangements for levies and charges imposed on agricultural primary products. Section 27A of the Act also provides for an authorised person, appointed by the Secretary of the Department of Agriculture and Water Resources (the Secretary), to disclose levy or charge payer information to eligible recipients, principally the rural research and development corporations (RDCs). Subsection 27B(1)(a) provides that an RDC may use the information given to it under subsection 27A(1) for the purpose of maintaining a register of levy payers or charge payers (levy payer register). Further uses of levy payer information include: maintaining a register of those persons eligible to vote in any poll conducted by, or on behalf of the body; making public any information of a statistical nature; and in performing any of its functions under a law of the Commonwealth, or under a contract, deed of agreement or other agreement between the Commonwealth and the body.

The purpose of the *Primary Industries Levies and Charges Collection Amendment (Returns) Regulations 2018* (the Regulations) is to amend the *Primary Industries Levies and Charges Collection Regulations 1991* (the Principal Regulations). The Regulations facilitate the maintenance of levy payer registers by the RDCs by providing for the collection of levy or charge payer information in returns where proper notification that a levy payer register is being kept is made. This information could then be disclosed to the RDCs in accordance with section 27A of the Act.

Levy payer registers will allow RDCs to identify and communicate directly with the levy payers who fund their activities, and accurately and efficiently allocate voting entitlements. It will be a matter for each RDC, in consultation with industry, to decide whether to maintain a levy payer register. It is intended that eligible recipients (including RDCs) will be provided policy guidance on the matters they should consider when deciding whether to maintain a levy payer register and that they would notify the Minister for Agriculture and Water Resources of their intent to maintain a levy payer register.

Levy payer information will be collected only where a levy payer register is being kept for the RDC to which the levy is directed and the Department of Agriculture and Water Resources (the Department) has published a notice that such a register is being kept.

Amendments to the Act were passed in 2016 that allow an authorised person, appointed under section 26, to disclose levy or charge payer information to an ‘eligible recipient’ as defined in subsection 27A(2). For most collection products, information related to levy payers (the person on whom levy or charge is imposed) is not currently collected in levy returns under the Principal Regulations. Under section 10 of the Principal Regulations, a return is, generally, only required to include the details of the person lodging the return. In many cases the person lodging the return is an intermediary or seller of prescribed goods or services under sections 7 and 9 of the Act, rather than the levy payer.

Where there is proper notification of a levy payer register for that collection product, the Regulations require a return to include a levy payer’s name, address, contact details, ABN (if any) and ACN (if any) and details relating to the amount of levy or charge they have paid or are liable to pay for the collection product for the period to which the return relates.

Returns are a fundamental part of how agricultural levies and charges legislation currently operates, and the Regulations build on these arrangements to place limited additional financial or administrative burdens on industry.

The Department has engaged regularly with the bodies listed as eligible recipients of levy payer information under subsection 27A(2) of the Act to discuss the progress of levy payer registers. In 2017 the Department successfully completed a pilot levy payer register with the Grains RDC.

Extensive consultation was also undertaken by the Senate Rural and Regional Affairs and Transport References Committee in its inquiry into industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agriculture sector. In its report, the committee recommended that the legislation be amended to allow the establishment of levy payer registers.

OBPR was consulted and a regulatory impact statement is not required (ID 19675).

Details of the Regulations are set out in Attachment A.

The Regulations are 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 Attachment B.

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

Details of the *Primary Industries Levies and Charges Collection Amendment (Returns) Regulations 2018*

Section 1 – Name

This section provides that the name of the regulations is the *Primary Industries Levies and Charges Collection Amendment (Returns) Regulations 2018* (the Regulations).

Section 2 – Commencement

This section provides for sections 1 to 4 and for the main amendments (Part 1 of Schedule 1) of the Regulations to commence the day after the instrument is registered. The section further provides that the contingent amendments (Part 2 of Schedule 1) commence either immediately after the commencement of Part 1 of Schedule 1 or at the same time as the *Primary Industries Levies and Charges Collection Amendment Act 2018* (PILCC Amendment Act) commences. The section provides that the provisions in Part 2 of Schedule 2 do not commence at all if the PILCC Amendment Act does not commence.

Section 3 – Authority

This section provides that the Regulations are made under the *Primary Industries Levies and Charges Collection Act 1991* (the Act).

Section 4 – Schedules

This section provides that the *Primary Industries Levies and Charges Collection Regulations 1991* (the Principal Regulations) are amended as set out in the Regulations.

Schedule 1 – Amendments

Part 1—Main amendments

Item 1 inserts two new subregulations into regulation 10 of the Principal Regulations relating to returns for a collection product.

Subregulation 10(4A) requires a return to include certain information—the name, address, contact details, ABN (if any) and ACN (if any) of each person who has paid, or is liable to pay, levy or charge for the product for the period to which the return relates—if a number of conditions are satisfied. The conditions are:

- if there is a notice published on the website of the Department of Agriculture and Water Resources (the Department) stating that there is a levy payer register being kept for the product by an eligible recipient within the meaning of subsection 27A(2) of the Act, other than the Australian Bureau of Statistics; and
- the return is not required to be lodged before 28 days after the date on which the notice is published.

As a matter of policy, a notice will only be published on the Department's website if the Minister for Agriculture and Water Resources has been notified that the rural research and

development corporation that receives the relevant levy intends to maintain a levy payer register.

Subregulation 10(4B) prescribes the information required to be collected when subregulation 10(4A) applies for a collection product for the period to which the return relates. This information is consistent with subsection 27A(1) of the Act.

Part 2 – Contingent amendments

Item 2 inserts a note at the end of regulation 10 to clarify that a return may also be required to contain details determined by the Secretary of the Department under section 32 of the Act relating to the production and processing of the collection product.

This item is contingent on the passage of the PILCC Amendment Act.

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 (Returns) Regulations 2018

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 Levies and Charges Collection Regulations 1991* (the Principal Regulations) set out the collection and reporting arrangements for levies and charges imposed on agricultural primary products under the *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999*. The *Primary Industries Levies and Charges Collection Amendment (Returns) Regulations 2018* (the Regulations) provide for the maintenance of levy payer registers by requiring the inclusion of individual levy payer details in a return where proper notification that a levy payer register is being kept is made.

Levy payer registers will allow research and development corporations (RDCs) to identify and communicate directly with the levy payers who fund their activities, and accurately and efficiently allocate voting entitlements. It will be a matter for each RDC, in consultation with industry, to decide whether to maintain a levy payer register and notify the Minister for Agriculture and Water Resources of its intention to do so. Levy payer information will be collected only where a levy payer register is being kept.

Human rights implications

The Regulations engage the right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). This right may be subject to permissible limitations, provided they are authorised by law and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the provisions, aims and objectives of the ICCPR, and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ in this context to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case. The collection, use, storage and sharing of personal information engages this right.

The Regulations compel the provision of specific levy payer information—the name, address, contact details, ABN (if any) and ACN (if any) of each person who has paid, or is liable to pay, levy or charge—only where a levy payer register is being kept in relation to a collection product for a period for which a return is submitted. Primary producers are often individuals, or family farms, so levy payer information may be personal information, as defined by subsection 6(1) of the *Privacy Act 1988*, and its collection and disclosure would allow for an individual to be identified and contacted by eligible recipients. Eligible recipients are restricted to those defined in subsection 27A(2) of the *Primary Industries Levies and Charges Collection Act 1991* (the Act).

The *Privacy Act 1988* regulates the handling of personal information about individuals and implements Australia's obligations, as a party to the ICCPR, regarding privacy. As Australian Privacy Principle (APP) entities, eligible recipients must use personal information in accordance with Schedule 1 of the *Privacy Act 1988*.

Further, section 27B of the Act sets out the purposes for which levy payer information provided to eligible recipients under section 27A of the Act can be used. These uses include: maintaining a register of levy payers or charge payers; determining whether a person is, or remains eligible to be, a member or shareholder of the body; maintaining a register of persons eligible to vote in a poll conducted by the eligible recipient; making public information of a statistical nature, which will be aggregated and de-identified; and for any functions required of the recipient under Commonwealth law or under an agreement that the eligible recipient has with the Commonwealth. On this basis, the collection of personal information under the Regulations is not arbitrary as it is only collected for specific uses which directly relate to the operations of eligible recipients. The connection between the limitation on the individual's right to privacy in the Regulations is rational and proportionate to the objective of the Regulations and the Act.

On this basis, the measures in the Regulations are consistent with the right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR.

Conclusion

This Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources