

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

Primary Industries (Excise) Levies Act 1999

Primary Industries (Excise) Levies Amendment (Cherries) Regulations 2021

Legislative Authority

The *Primary Industries (Excise) Levies Act 1999* (the Act) authorises the imposition of primary industries levies, which are duties of excise.

Section 8 of 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.

Research and marketing component of the cherry levy

Schedule 15 to the Act imposes a levy on leviable horticultural products. Clause 5.1 of Schedule 15 to the *Primary Industries (Excise) Levies Regulations 1999* (Regulations) prescribes cherries to be a leviable horticultural product.

Subclauses 4(1) and (3) of Schedule 15 to the Act permit the regulations to fix the rate of a marketing component and research and development component for levies on leviable horticultural products. Clauses 5.3 and 5.4 of Schedule 15 to the Regulations set the marketing component and research and development component of the levy on cherries.

Subclauses 6(4) and 6(6) of Schedule 15 to the Act impose conditions requiring the Minister to consider any relevant recommendations from the industry services body before the Governor-General makes regulations for the purposes of setting the marketing component and research and development component of the levy on cherries. Before making a recommendation to the Minister for the marketing component, the industry services body must consult with the body that, under the regulations, is the eligible industry body.

The term ‘industry services body’ is defined in clause 1 of Schedule 15 to the Act as the industry services body declared under section 9 of the *Horticulture Marketing and Research and Development Services Act 2000*. The industry services body is Horticulture Innovation Australia (HIA): see the *Horticulture Marketing and Research and Development Services (New Industry Services Body and Industry Export Control Body) Declaration 2014*.

Clause 5.5 of Schedule 15 of the Regulations prescribes Cherry Growers of Australia Inc (CGA) to be the eligible industry body for cherries.

Emergency response levies

Parts 2, 3 and 4 of Schedule 27 to the Act provide that Regulations may impose primary industries levies, set the rate of the levies and specify the person liable to pay the levy.

Clauses 5.6 and 5.7 of Schedule 15 to the Act impose an EPPR levy and PHA levy on cherries, respectively.

Subclause 14(2) of Schedule 27 to the Act provides that if there is a single body that is a designated body for a particular product then, before the Governor-General makes a regulation in relation to the product, the Minister must take into consideration any relevant recommendation made to the Minister by the body.

CGA, the national peak body for the cherry industry in Australia, is the designated body for cherries within the *Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013*.

Purpose

The purpose of the *Primary Industries (Excise) Levies Amendment (Cherries) Regulations 2021* (the Regulations) is to:

- decrease the marketing levy on cherries from 3 c/kg to 1 c/kg.
- increase the research and development levy on cherries from 3.97 c/kg to 5 c/kg.
- increase the Plant Health Australia levy on cherries from 0.03 c/kg to 0.3 c/kg.
- increase the Emergency Plant Pest Response levy on cherries from nil to 0.7 c/kg.

Levies are introduced, administered and collected by the Australian Government, usually at the request of industry. The Department of Agriculture, Water and the Environment on behalf of the Commonwealth, collects the levy and disburses the funds to the relevant recipient body.

Background and consultation

The amendments are the result of two industry consultation processes by CGA, each meeting the requirements of the Australian Government *Levy guidelines: How to establish or amend agricultural levies* for the type of levy amendment proposed. CGA first consulted with levy payers on changes to the research and development, marketing and Plant Health Australia (PHA) levy components. The research levy would have been increased to 5.7 c/kg, with the marketing and PHA levies as set out in the current proposal and no change to the Emergency Plant Pest Response (EPPR) levy. CGA conducted a ballot that achieved a result of 71 per cent support for these proposed changes.

After the ballot it became necessary to activate the EPPR levy as the cherry industry became an affected party in responses under the Emergency Plant Pest Response Deed for varroa mite, brown marmorated stink bug and Torres Strait fruit fly. As cherry growers had strongly supported the overall levy rate remaining at 7.0c/kg, CGA proposed the research levy rate be reduced to 5.00 c/kg and the EPPR levy be set to 0.70 c/kg. Levy payers were notified of the updated proposal. An objection period held from 10 September to 22 October 2020 returned no objections.

CGA submitted a request to the Minister, recommending that the cherry levy (and equivalent charge) be amended as described above. HIA also wrote to the Minister in support of the request. The recommendations of CGA and HIA were considered by the Minister before the Governor-General made the Regulations.

Impact and Effect

As the amendments will not change the cherry levy rate overall, the changes will not directly influence the price of that product. The amendments will facilitate an industry-supported increase to industry investment in research and development, and biosecurity, and facilitate repayment of cherry industry emergency eradication response contributions underwritten by the Australian Government.

Details / Operation

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 (Excise) Levies Amendment (Cherries) Regulations 2021*

Section 1 – Name

This section provides that the name of the proposed Regulations is the *Primary Industries (Excise) Levies Amendment (Cherries) Regulations 2021*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 April 2021.

Section 3 – Authority

This section provides that the proposed Regulations are made under the *Primary Industries (Excise) Levies Act 1999*.

Section 4 – Schedules

This section provides for the *Primary Industries (Excise) Levies Regulations 1999* to be amended as set out in Schedule 1.

Schedule 1

Item 1 amends clause 5.3 of Schedule 15 to omit “3 cents” and substitute “1 cent”.

Item 2 amends clause 5.4 of Schedule 15 to omit “3.97 cents” and substitute “5 cents”.

Item 3 amends subclause 5.6(2) of Schedule 15 to omit “nil” and substitute “0.7 cents per kilogram”.

Item 4 amends subclause 5.7(2) of Schedule 15 to omit “0.03 cents” and substitute “0.3 cents”.

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 (Cherries) Regulations 2020

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 Primary Industries (Excise) Levies Amendment (Cherries) Regulations 2021 (the Regulations) is to:

- decrease the marketing levy on cherries from 3 c/kg to 1 c/kg.
- increase the research and development levy on cherries from 3.97 c/kg to 5 c/kg.
- increase the Plant Health Australia levy on cherries from 0.03 c/kg to 0.3 c/kg.
- increase the Emergency Plant Pest Response levy on cherries from nil to 0.7 c/kg.

The Regulations commence on 1 April 2021.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The measures in the Regulations are 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* as the Regulations do not engage any human rights issues.

The Hon. David Littleproud MP

Minister for Agriculture, Drought and Emergency Management