

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

*Primary Industries (Excise) Levies Act 1999*

*Primary Industries (Excise) Levies Amendment (Rubus) Regulations 2023*

### **Legislative Authority**

The *Primary Industries (Excise) Levies Act 1999* (the Act) authorises the imposition of primary industries levies that 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.

### **Purpose**

The purpose of the *Primary Industries (Excise) Levies Amendment (Rubus) Regulations 2023* (the Regulations) is to meet current industry needs by:

- decreasing the existing marketing levy rate from 2 cents per kilogram of the fruit to nil;
- decreasing the existing research and development levy rate from 10 cents per kilogram of rubus to 2 cents per kilogram of the fruit; and
- introducing a Plant Health Australia (PHA) levy for rubus set at 2 cents per kilogram of the fruit for plant health and biosecurity activities.

### **Background**

Levies are generally imposed and changed on the request of industry and disbursed by the Commonwealth to certain bodies to undertake particular activities for the benefit of industry. Rubus is a leviable horticultural product and this includes fruit of plants of the genus *rubus* such as raspberries and blackberries.

Clause 2 of Schedule 15 to the Act imposes a levy on certain leviable horticultural products that are produced in Australia, that are sold by the producer, or used by the producer in the production of other goods. Rubus is prescribed as a leviable horticultural product and under that Schedule. The regulations may fix a rate of levy in relation to rubus that is a marketing component and a research and development component. Clauses 2, 6 and 11 of Schedule 27 to the Act enable the regulations to impose a levy on one or more specified products (that are the produce of a primary industry such as rubus) and provide for the rate of levy and the person liable to pay a levy. This power is used to introduce the PHA levy.

Clause 6 of Schedule 15 to the Act requires the Minister to consider certain matters before the Governor-General makes regulations for the purposes of those Schedules. This includes any relevant recommendation the industry services body makes to the Minister following consultation with the eligible industry body for the leviable horticultural product. In relation to this:

- Horticulture Innovation Australia Limited (Hort Innovation Australia) is the industry services body declared under section 9 of the *Horticulture Marketing and Research Development Services Act 2000*; and

- Raspberries and Blackberries Australia Incorporated (RABA), formerly Australian Rubus Growers Association Incorporated, is the eligible industry body for rubus (see clause 25.6 of Part 25 of Schedule 15 to the Excise Regulations).

Clause 14 of Schedule 27 to the Act requires the Minister to take into account any relevant recommendation made to the Minister by the designated body. There is no designated body for rubus prescribed for the purposes of that Schedule. RABA recommended that the research and development component of the levy be reduced from 10 cents to 2 cents per kilogram of rubus and that the marketing component of the levy be reduced from 2 cents per kilogram of rubus to nil. Hort Innovation Australia supported RABA's recommendations but did not make any recommendations.

### **Impact and Effect**

The amendments will benefit rubus farmers by decreasing the total levy in line with current industry requirements from 12 cents per kilogram to 4 cents per kilogram of rubus, and by introducing the PHA levy. The new levy will initially be used to repay industry response contributions underwritten by the Australian Government for three responses under the Emergency Plant Pest Response Deed and later for broader plant health and biosecurity activities.

Complementary amendments to the *Primary Industries (Customs) Charges Regulations 2000* by the *Primary Industries (Customs) Charges Amendment (Rubus) Regulations 2023* align changes in the charge rates for rubus with the changes in excise levies.

### **Consultation**

The measures in these Regulations were developed with extensive consultation with rubus growers, in accordance with the Australian Government's Levy Principles and Guidelines. The consultation was managed by Berries Australia on behalf of RABA, the national peak industry body for rubus growers in Australia. A six week objection period from 20 January 2023 to 10 March 2023 gave levy payers an opportunity to raise any concerns about the levy proposal and no objections were received. The department assessed the proposal and considered it to meet the requirements of the *Levy Principles and Guidelines*.

The Office of Impact Analysis has been consulted and has advised that an Impact Assessment is not required for changes to existing levy (OBPR ID: 22416).

### **Details/ Operation**

Details of the Regulations are set out in [Attachment A](#).

### **Other**

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 will commence on 1 October 2023. The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Primary Industries (Excise) Levies Amendment (Rubus) Regulation 2023***

Section 1 – Name

This section provides that the name of the Regulations is the *Primary Industries (Excise) Levies Amendment (Rubus) Regulations 2023* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 1 October 2023.

The note following subsection 2(1) highlights that the table only relates to the provisions of this instrument as originally made. The table is not amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 contains relevant dates and details.

Section 3 – Authority

This section provides that this instrument is made under *Primary Industries (Excise) Levies Act 1999*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1 – Amendments**

### ***Primary Industries (Excise) Levies Regulations 1999***

#### **Item 1 – Before clause 25.1 of Schedule 15**

This item inserts a new heading ‘Division 25.1 – Product levy’ before clause 25.1 of Schedule 15.

#### **Item 2 – Clause 25.4 of Schedule 15**

This item repeals the existing clause 25.4, which sets the current rate of levy on rubus in relation to the marketing component and substitutes a new nil rate of the marketing component of the levy on rubus, on or after 1 October 2023.

#### **Item 3 – Clause 25.5 of Schedule 15**

This item omits the existing rate of levy on rubus in relation to the research and development component of 10 cents per kilogram of the fruit and substitutes a new rate of 2 cents per kilogram of the fruit on or after 1 October 2023.

#### **Item 4 – At the end of Part 25 of Schedule 15**

This item adds a new Division 25.2 – Special purpose levies at the end of Part 25 of Schedule 15. The purpose of this new Division is to provide for a Plant Health Australia (PHA) levy on rubus.

New subclause 25.7(1) provides that for the purposes of clause 2 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* (the Excise Levies Act), PHA levy is imposed on rubus on which levy is imposed by Schedule 15 to that Act.

New subclause 25.7 (2) provides that for the purposes of clause 6 of Schedule 27 to the Excise Levies Act, the rate of PHA levy on rubus is 2 cents per kilogram of the fruit.

New subclause 25.7(3) provides that for the purposes of clause 11 of Schedule 27 to the Excise Levies Act the PHA levy on rubus is payable by the producer of the rubus.

A note at the end of the new clause 25.7 provides that the *Plant Health Australia (Plant Industries) Funding Act 2002* deals with some of the effects of payment and collection of PHA levy.

**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 (Rubus) Regulations 2023***

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 (Rubus) Regulations 2023* (the Legislative Instrument) is to make the following changes to the *Primary Industries (Excise) Levies Regulations 1999* to meet current industry needs of the sector:

- decrease the existing marketing levy rate from 2 cents per kilogram of the fruit to nil;
- decrease the existing research and development levy rate from 10 cents per kilogram of rubus to 2 cents per kilogram of the fruit; and
- introduce a Plant Health Australia (PHA) levy for rubus set at 2 cents per kilogram of the fruit for plant health and biosecurity activities.

The Legislative Instrument commences on 1 October 2023.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

The measures in the Legislative Instrument 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 Legislative Instrument does not engage any human rights issues.

**Senator the Hon. Murray Watt**

**Minister for Agriculture, Fisheries and Forestry**