

## **EXPLANATORY STATEMENT**

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

*Primary Industries (Consequential Amendments and Transitional Provisions) Act 2024*

*Primary Industries (Consequential Amendments and Transitional Provisions) Rules 2024*

### **Legislative Authority**

The *Primary Industries (Consequential Amendments and Transitional Provisions) Act 2024* (the Act) forms part of a package of Acts to modernise the agricultural levies and charges legislative framework (the modernised legislative framework). Item 16 of Schedule 4 to the Act provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- the enactment of the *Primary Industries Levies and Charges Collection Act 2024* (the Collection Act) or the *Primary Industries Levies and Charges Disbursement Act 2024* (the Disbursement Act); or
- the amendments or repeals made by Schedule 1 or 2 to the Act.

Section 4 of the *Acts Interpretation Act 1901* (the Acts Interpretation Act) provides authority for legislative instruments, including rules, to be made after enactment but before the commencement of the relevant enabling legislation. Subsection 4(2) of the Acts Interpretation Act enabled the Minister to make the *Primary Industries (Consequential Amendments and Transitional Provisions) Rules 2024* (the Rules) before commencement of the Act as if the Act had already commenced. Schedule 4 to the Act commences on 1 January 2025.

The Act, in combination with the following Acts, provides the overarching legislative framework for agricultural levies and charges, known as the agricultural levy system:

- *Primary Industries (Excise) Levies Act 2024*;
- *Primary Industries (Customs) Charges Act 2024*;
- *Primary Industries (Services) Levies Act 2024*;
- Collection Act; and
- Disbursement Act.

The Act, amongst other things:

- repeals Acts that are, or become, redundant on 1 January 2025 and the commencement of key provisions in the above new Acts;
- makes consequential amendments to Commonwealth legislation to reflect the repeal of those Acts and to support transitional arrangements for the modernised legislative framework;
- sets out application, savings and transitional arrangements to ensure continuity of arrangements and minimal impacts for levy and charge payers, collection agents and levy recipient bodies due to the repeal of the Acts and commencement of the above new Acts.

Extensive industry consultation occurred during the development of the modernised legislative framework as outlined below.

## **Purpose**

The purpose of the Rules is to:

- provide transitional arrangements for:
  - the old levy on sugar cane and the old charge on fodder;
  - an alternative payment method for large producers or purchasers for the levy on mushrooms; and
  - the disbursement of amounts in relation to the fishing levy; and
- continue the operation of certain provisions of the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Regulation 2014* that may not be spent; and
- continue in force certain instruments of authorisation and delegation for the continued application of the *Primary Industries Levies and Charges Collection Act 1991* and the *old disbursement law* (within the meaning of the Act) after the repeal of those laws by the Act.

## **Background**

The agricultural levy and charge system is a long-standing partnership between industry and the Australian Government to facilitate industry investment in strategic activities. Levies and charges are generally payable by farmers, producers, processors and exporters.

Amounts equal to the collected levy and charge are generally disbursed by the Commonwealth to recipient bodies and other entities to support activities the levies were imposed to fund. This includes research and development, marketing, biosecurity activities, biosecurity responses, and National Residue Survey testing. Without these arrangements most individual producers could not invest effectively in these activities.

A 2018 review in relation to the sunseting of the pre-existing legislative framework found the legislative framework should be modernised to be more effective in meeting industries' needs in the future.

## **Impact and effect**

The Rules form part of a modernised legislative framework that streamlines the legislation to better support industries' needs in the future.

## **Consultation**

The Rules are informed by extensive consultation by the Department of Agriculture, Fisheries and Forestry (the department) with industry groups, levy payers, collection agents, bodies that receive levy and charge funding, and the public.

- 2017-18: The department reviewed the agricultural levies and charges legislative framework and undertook targeted consultation with approximately 70 stakeholder groups.

- 2019-20: The department released the ‘Streamlining and modernising agricultural levies legislation – early assessment regulation impact statement’ for public consultation.
- 2021-22: The department conducted further consultation with industry representatives and bodies that receive levy and charge funding (industry-owned and statutory research and development corporations, Animal Health Australia and Plant Health Australia).
- 2023: Public consultation occurred on the draft Bills and a sample of the delegated legislation.
- 2024: Public consultation occurred on exposure drafts of the *Primary Industries (Excise) Levies Regulations 2024*, the *Primary Industries (Customs) Charges Regulations 2024*, the *Primary Industries Levies and Charges Collection Rules 2024* and rules proposed to be made under the *Primary Industries Levies and Charges Disbursement Act 2024*.

The department considered feedback from that consultation in developing the Rules, with generally supportive feedback received, and has ensured that the policy implemented in the Rules is consistent with the consultation outcomes.

Consultation on the modernised legislative framework also occurred with relevant Commonwealth agencies during the development of the legislation, including the Attorney-General’s Department, the Australian Bureau of Statistics, the Australian Public Service Commission, the Department of Finance, the Department of the Prime Minister and Cabinet, the Federal Court of Australia, the Federal Circuit and Family Court of Australia, the Office of the Australian Information Commissioner and the Treasury.

Feedback from these Commonwealth agencies has also been appropriately addressed in the development of the new framework.

The Minister was satisfied that the consultation undertaken in relation to the Rules was appropriate and reasonably practicable to undertake, as required by section 17 of the *Legislation Act 2003* (Legislation Act).

The Office of Impact Analysis was consulted in relation to the Impact Analysis (OBPR22-03525) for modernising the agricultural levies legislation.

## **Details/Operation**

Details of the Rules are set out in Attachment A.

## **Other**

The Rules 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 Rules will commence on 1 January 2025.

The Rules are a legislative instrument for the purposes of the Legislation Act.

**Details of the *Primary Industries (Consequential Amendments and Transitional Provisions) Rules 2024***

**Part 1—Preliminary**

**Section 1—Name**

This section provides that the name of the instrument is the *Primary Industries (Consequential Amendments and Transitional Provisions) Rules 2024* (the Rules).

**Section 2—Commencement**

This section provides that the Rules commence on 1 January 2025.

**Section 3—Authority**

This section provides that the Rules are made under the *Primary Industries (Consequential Amendments and Transitional Provisions) Act 2024* (the Act).

**Section 4—Definitions**

This section provides definitions of terms used in the Rules.

<b>Term</b>	<b>Definition</b>
<b><i>charge</i></b>	has the same meaning as in the <i>Primary Industries Levies and Charges Collection Act 1991</i> , as in force immediately before the commencement of section 4.
<b><i>fishing levy</i></b>	means the levy imposed by section 5 of the <i>Fishing Levy Act 1991</i> .
<b><i>fodder</i></b>	has the same meaning as in Part 5 of Schedule 14 to the <i>Primary Industries (Customs) Charges Regulations 2000</i> , as in force immediately before the commencement of section 4.
<b><i>levy</i></b>	has the same meaning as in the <i>Primary Industries Levies and Charges Collection Act 1991</i> , as in force immediately before the commencement of section 4.
<b><i>sugar cane</i></b>	has the same meaning as in Schedule 24 to the <i>Primary Industries (Excise) Levies Act 1999</i> , as in force immediately before the commencement of section 4.

## Part 2—Transitional rules

### Section 5—Old levy on sugar cane and old charge on fodder

#### *Sugar cane*

Subsection 5(1) provides that, subject to section 5, the following laws continue to apply on and after the commencement of section 5 in relation to levy on sugar cane and the 12-month period beginning on 1 March 2024:

- (a) the *Primary Industries (Excise) Levies Act 1999*, and the regulations under that Act, as in force immediately before the commencement of this section;
- (b) the *Primary Industries Levies and Charges Collection Act 1991*, and the regulations under that Act, as in force immediately before the commencement of this section;
- (c) the *Sugar Research and Development Services Act 2013*, as in force immediately before the commencement of this section.

#### *Fodder*

Subsection 5(2) provides that, subject to section 5, the following laws continue to apply on and after the commencement of section 5 in relation to charge on fodder and the 12-month period beginning on 1 July 2024:

- (a) the *Primary Industries (Customs) Charges Act 1999*, and the regulations under that Act, as in force immediately before the commencement of this section;
- (b) the *Primary Industries Levies and Charges Collection Act 1991*, and the regulations under that Act, as in force immediately before the commencement of this section;
- (c) the *Primary Industries Research and Development Act 1989*, and the regulations under that Act, as in force immediately before the commencement of this section.

#### *Common rules*

Subsection 5(3) provides that if, in relation to that levy or charge, the due date for payment of the whole or a part of that levy or charge, or an amount equal to the whole or a part of that levy or charge, is a day (other than the last day) of a calendar month beginning on or after the commencement of section 5, then the due date for that payment is taken to be the last day of that calendar month.

Subsection 5(4) provides that if, in relation to that levy or charge, the due date for lodging a return is a day (other than the last day) of a calendar month beginning on or after the commencement of section 5, then the due date for that return is taken to be the last day of that calendar month.

Section 5 provides for the continued imposition and collection of the levy on sugar cane and the charge on fodder under the relevant laws, and the disbursement of amounts in relation to that levy and charge, until the intended application of new regulations and rules for a levy on sugarcane and a charge on fodder.

The section also provides for due dates for levy or charge payments and lodging returns for the transitional period. These rules are necessary because the old levy on sugar cane and the

old charge on fodder do not have defined ‘levy years’ under the old laws and, consequently, are not captured by the saving and transitional provisions in relation to old levies or charges in the Act.

#### Section 6—Levy on mushrooms—alternative payment method for large producers or purchasers

Subsection 6(1) provides that if:

- before the commencement of section 6, a person was granted an approval under clause 18.8B of Schedule 22 of the *Primary Industries Levies and Charges Collection Regulations 1991* in relation to the 2024-2025 financial year; and
- for that financial year, the person paid the levy concerned in accordance with the method set out in clause 18.8C of that Schedule;

the person is taken to have been granted an approval (the *new approval*) under clause 36-4 of Schedule 2 to the *Primary Industries Levies and Charges Collection Rules 2024* (the *Collection Rules*) for the 2025-2026 financial year.

Subsection 6(2) provides that subsection 6(1) does not prevent the new approval from being revoked in accordance with clause 36-4 of Schedule 2 to the *Collection Rules*.

The effect of section 6 is to provide, in relation to the levy on *Agaricus* mushrooms, for the continuation of an approval under the old law in relation to the 2024-2025 financial year, to pay levy in accordance with the alternative payment method, for payment of levy in accordance with the method under the new law in the following financial year, provided the approval is not revoked.

#### Section 7—Fishing levy

Section 7 provides that the *Primary Industries Research and Development Act 1989* (the *PIRD Act*), and the *Fisheries Research and Development Corporation Regulations 1991* (the *FRDC Regulations*), as in force immediately before the commencement of section 7 of the *Rules*, continue to apply on and after that commencement in relation to the fishing levy and the financial year beginning on 1 July 2023 or any earlier financial year.

Items 27 and 52 of Schedule 2 to the Act repeal sections 5 and 30A of the *PIRD Act*, respectively, commencing on 1 January 2025. Section 5 of the *PIRD Act* authorises the *FRDC Regulations* to attach the fishing levy to the Fisheries Research and Development Corporation (the *FRDC*) and prescribe a proportion of that levy to be the research component of the levy. Section 30A of the *PIRD Act* requires the payment of amounts equal to the research component of the levy and penalty received by the Commonwealth to the *FRDC*.

Item 2 of Schedule 1 to the *Primary Industries Legislation (Repeals and Consequential Amendments) Regulations 2024* repeals the *FRDC Regulations* commencing on 1 January 2025. Subsection 4A(1) of the *FRDC Regulations* attaches the fishing levy to the *FRDC* for the purposes of paragraph 5(1)(a) of the *PIRD Act*. Subsection 4A(2) of the *FRDC Regulations* provides that the research component of that levy is a percentage of the fishing levy for each financial year. These percentages are prescribed for the purposes of paragraph 5(3)(a) of the *PIRD Act*.

Section 7 of the Rules provides for the FRDC Regulations and the PIRD Act to continue to apply in relation to the fishing levy, for the financial year beginning on 1 July 2023, and any earlier financial year. In so doing, the section provides a mechanism after 1 January 2025 to disburse amounts equal to amounts of the research component of fishing levy in relation to the financial year beginning on 1 July 2023 (or an earlier year) that are received by the Commonwealth.

#### Section 8—Continuing operation of certain horticultural provisions

Section 8 provides that despite the repeal of the *Horticulture Marketing and Research and Development Services Act 2000* (the HMRDS Act) made by Schedule 1 to the Act, section 9 of the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Regulation 2014* (the HMRDS (Transfer of Industry Assets and Liabilities) Regulation), as in force immediately before the commencement of section 8, continues to apply on and after that commencement in relation to an instrument that was in operation immediately before that commencement.

The HMRDS (Transfer of Industry Assets and Liabilities) Regulation was made under the HMRDS Act and ceases to have effect on the repeal of the HMRDS Act. Section 9 of the HMRDS (Transfer of Industry Assets and Liabilities) Regulation is a transitional provision that may not be completely spent. Section 8 provides certainty that, in the event that section 9 of the HMRDS (Transfer of Industry Assets and Liabilities) Regulation is capable of having continuing operation, it will do so despite the repeal of the HMRDS Act.

#### Section 9—Authorisations and delegations

Section 9 provides that certain instruments of authorisation and delegation in force immediately before the commencement of that section continue in force on and after that commencement in relation to:

- the continued application of the repealed *Primary Industries Levies and Charges Collection Act 1991* (the PILCC Act), and the regulations under that Act, and
- the continued application of the *old disbursement law*.

Subsection 9(1) provides that an instrument in force under section 26 or 29 of the PILCC Act immediately before the commencement of section 9 continues in force on and after that commencement in relation to the continued application of that Act, and the regulations under that Act, on and after that commencement.

Section 26 of the PILCC Act provides that the Secretary may, in writing, appoint a person employed by, or in the service of, a collecting authority or a collecting organisation to be an authorised person for the purposes of section 23 of that Act; and appoint a person appointed or engaged under the *Public Service Act 1999* to be an authorised person for the purposes of a specified provision of that Act including section 23.

Section 29 of the PILCC Act contains two delegation powers, which respectively provide that the Secretary may, in writing, delegate:

- to the person occupying an office in the Department certain of the Secretary's powers under that Act; and

- to an SES employee in the Department, who is at or acting at Band 1 or 2 level, the Secretary's powers under section 27B of the Act.

The effect of subsection 9(1) is to ensure the continuation of the effective and efficient administration for the collection of levies and charges under powers in and under the PILCC Act saved by item 2 of Schedule 4 to the Act.

Subsection 9(2) provides that an instrument of delegation in force under the *old disbursement law* (within the meaning of Schedule 4 to the Act) continues in force on and after the commencement of section 9 in relation to the continued application of that law on and after that commencement.

The *old disbursement law* is defined in item 1 of Schedule 4 to the Act as meaning certain Acts and regulations under those Acts that are repealed by or under the Act.

Several instruments of delegation are currently in force under the *old disbursement law*, which generally operate to delegate the powers of the Minister or Secretary under the *old disbursement law* to determine gross value of production amounts for matching payments to industry bodies.

The effect of subsection 9(2) is to maintain the ability of a delegate to exercise those powers, to the extent that the powers are saved by item 4 of Schedule 4 to the Act.



**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
*Primary Industries (Consequential Amendments and Transitional Provisions) Rules 2024*

This disallowable 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*.

**Background**

The *Primary Industries (Consequential Amendments and Transitional Provisions) Act 2024* (the Act) forms part of a package of Acts to modernise the agricultural levies and charges legislative framework. Item 16 of Schedule 4 to the Act provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- the enactment of the *Primary Industries Levies and Charges Collection Act 2024* (the Collection Act) or the *Primary Industries Levies and Charges Disbursement Act 2024* (the Disbursement Act); or
- the amendments or repeals made by Schedule 1 or 2 to the Act.

The Act, in combination with the following Acts, provides the overarching legislative framework for agricultural levies and charges, known as the agricultural levy system:

- *Primary Industries (Excise) Levies Act 2024*;
- *Primary Industries (Customs) Charges Act 2024*;
- *Primary Industries (Services) Levies Act 2024*;
- Collection Act; and
- Disbursement Act.

**Overview of the legislative instrument**

The purpose of the *Primary Industries (Consequential Amendments and Transitional Provisions) Rules 2024* (the Rules) is to:

- provide transitional arrangements for:
  - the old levy on sugar cane and the old charge on fodder;
  - an alternative payment method for large producers or purchasers for the levy on mushrooms; and
  - the disbursement of amounts in relation to the fishing levy ;and
- continue the operation of certain provisions of the *Horticulture Marketing and Research and Development Services (Transfer of Industry Assets and Liabilities) Regulation 2014* that may not be spent; and
- continue in force certain instruments of authorisation and delegation for the continued application of the *Primary Industries Levies and Charges Collection Act 1991* and the

*old disbursement law* (within the meaning of the Act) after the repeal of those laws by the Act.

The legislative instrument commences on 1 January 2025.

### **Human rights implications**

Aspects of the Act were assessed as engaging human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. That assessment was set out in the Explanatory Memorandum to the Bill for the Act. It concluded that the Act, and the agricultural levy and charge system overall, were compatible with human rights, or to the extent that it did engage and limit specified human rights, those limitations were reasonable, necessary and proportionate to the Act's legitimate objectives.

The Parliamentary Joint Committee on Human Rights examined the Statement of Compatibility with Human Rights to the Bill in Report 12 of 2023, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Committee made no comment on the Bill on the basis that it did not engage, or only marginally engaged human rights; promoted human rights; and/or permissibly limited human rights. For an analysis of the human rights implications of the modernised levies legislation package as a whole, the Explanatory Memoranda for the above Bills should be referred to.

This legislative instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

The 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* as it does not engage any human rights.

**The Hon. Julie Collins**

**Minister for Agriculture, Fisheries and Forestry**