

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the Authority of the Secretary of the Department of Agriculture, Fisheries and
Forestry

Primary Industries Levies and Charges Collection Act 2024

Primary Industries Levies and Charges Collection Amendment (Honey) Rules 2025

Purpose of the Supplementary Explanatory Statement

This Supplementary Explanatory Statement amends and supplements the initial explanatory statement to the *Primary Industries Levies and Charges Collection Amendment (Honey) Rules 2025* (the Rules) in accordance with paragraph 15J(1)(c) of the *Legislation Act 2003*. The purpose of this Supplementary Explanatory Statement is to provide additional clarifying material for the Rules.

This Supplementary Explanatory Statement also responds to a request of the Secretariat for the Senate Standing Committee for the Scrutiny of Delegated Legislation to provide additional explanatory material in relation to the nature and scope of personal information that must be kept in records under subclause 3-1(6) of the Rules and whether the information may be required to be disclosed; the safeguards in place to protect personal information; specifying a strict liability offence and civil penalty elements in delegated legislation; and the nature and scope of the offences and civil penalty provisions in sections 17 and 18 of the *Primary Industries Levies and Charges Collection Act 2024* (Collection Act), including what penalties attach to each offence.

Amendment to the Explanatory Statement for the Rules

Attachment A – Details of the *Primary Industries Levies and Charges Collection Amendment (Honey) Rules 2025*

Schedule 1 – Amendments

Primary Industries Levies and Charges Collection Rules 2024

After the paragraph with the wording:

New subclause 3-1(3) of Schedule 1 provides that subclause 3-1(2) does not apply to honey that is covered by exemptions from levy in subclause 3-2(1) (levy previously imposed) or subclause (2) (honey sold after export) of Schedule 1 to the Levies Regulations.

Insert the following new paragraphs:

Subclause 3-1(6) of Schedule 1 to the *Primary Industries Levies and Charges Collection Rules 2024* (the Collection Rules) was part of a repeal and substitution of clause 3-1 by the instrument that replicated provisions that were renumbered. The subclause replicates previous subclause 3-1(4) of that Schedule.

Subclause 3-1(6) continues to require levy payers, charge payers or collection agents to make and keep certain records in relation to amounts they have paid or that have been paid on their behalf for a period of five years.

Beyond the contact details of collection agents, the nature and scope of the personal information that continues to be required to be kept will depend on the circumstances, but may include a person's contact details (name, phone number, email address). The information will relate to amounts of levy or charge payable by a person on various commodities, including in relation to honey.

Under Division 2 of Part 5 of the Collection Act, the Secretary has information gathering powers to require a person to provide information or documents relevant to the operation of the Collection Act or the Collection Rules. It would be possible for the Secretary to use these information gathering powers to require a levy payer or charge payer to provide the records they have made and kept pursuant to subclause 3-1(6) of the Collection Rules.

In circumstances where a levy payer or charge payer or a collection agent is required to provide records to the Department of Agriculture, Fisheries and Forestry (the Department), those records would become subject to the information management provisions in the Collection Act and may be disclosed pursuant to those provisions or other laws.

Division 3 of Part 5 of the Collection Act provides for authorised uses and disclosures of relevant levy/charge information (defined in Part 1 of the Collection Act). Examples of provisions providing for authorised uses and disclosures of such information include:

- use or disclosure for the purposes of administering the Collection Act or the Collection Rules or monitoring compliance with the Collection Act or the Collection Rules;
- use or disclosure for agricultural research or agricultural policy development (or both);
- use or disclosure for the purposes of other Acts administered by the Agriculture Minister (other than the *Primary Industries Levies and Charges Disbursement Act 2024*).

In circumstances where a levy payer or charge payer is required to provide records to the Department, those records would be protected by the *Privacy Act 1998* (the Privacy Act) and other laws, and the limitations in the Collection Act. Each provision in Division 3 of Part 5 of the Collection Act that authorises the use or disclosure of relevant information provides an authorisation for the purposes of the Privacy Act and other laws.

There are restrictions in the Collection Act relating to the disclosure of personal information. Specifically, subsection 28(4) of the Collection Act provides that specified provisions authorising the use or disclosure of relevant levy/charge

information for certain purposes do not apply to the disclosure of personal information.

There are requirements against unauthorised use or disclosure of *protected information* provided in Division 4 of Part 5 of the Collection Act. Section 45 includes an offence and a civil penalty provision for the unauthorised use or disclosure of protected information, which covers information (including commercially sensitive information) the disclosure of which could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence. Protected information may include personal information.

Further, under Subdivision B of Division 3 of Part 5 of the Collection Act, a declared recipient body or a statutory recipient body commits an offence if they use or disclose information they have received or accessed concerning levy payers or charge payers (including their names and contact details and the amounts of levy and charge they have paid), other than for an authorised purpose.

As an Australian Government agency, the Department is bound by the Australian Privacy Principles (the APPs) in the Privacy Act and the Australian Government Agencies Privacy Code (the Privacy Code). These obligations extend to the Department's employees, contractors and agents. Personal information is held in accordance with the collection and security requirements of the APPs, the Department's policies and procedures and the Australian Government Protective Security Policy Framework.

The Department maintains robust policies and procedures to protect any personal information which it holds, as documented in the Department's Privacy Policy (<https://www.agriculture.gov.au/about/commitment/privacy>).

The instrument repealed and substituted clause 3-1, including:

- replacing in subclause 3-1(6) a note previously in subclause 3-1(4), which states that section 18 of the Collection Act contains an offence for failing to make or keep records in accordance with this provision; and
- replicating previous subclause 3-1(4) as subclause 3-1(5) with updates to align return requirements in certain circumstances. A note to this provision states that section 17 of the Act contains an offence and civil penalty for failing to give a return in accordance with the instrument.

The offences in sections 17 and 18 of the Collection Act are strict liability offences.

The Collection Act and the Collection Rules provide for the collection of levies and charges imposed under the agricultural levy and charge system. Importantly, the Collection Act enables the Collection Rules to make provision for and in relation to, relevantly, requiring levy payers, charge payers and collection agents to give returns, and make and keep records for the purposes of the Collection Act, and requiring

persons to make and keep records in relation to the collection of commodities/services.

The Collection Rules provide for a consolidated suite of requirements for the collection of levies and charges imposed in relation to each commodity on which levy or charge is imposed. Each Division of Schedule 1 and 2 prescribes requirements on levy or charge payers or collection agents to make payments, give returns, and make or keep records, and provide for certain processes, that are tailored to the particulars of each levy or charge (and the primary industry to which it relates).

Providing for these requirements in the Collection Rules allows flexibility for them to be amended relatively quickly to accommodate for example, evolving industry needs and practices or changing economic conditions. For example, the Collection Rules as amended by the Rules require returns in relation to the use of honey levy to be given after the end of each quarter, rather than after the end of each calendar year, in response to the needs of honey levy payers and collection agents. If the requirements concerning the giving of returns were in the Collection Act, there would have been less flexibility to amend them in time to accommodate the needs of the honey industry.

Sections 17 and 18 of the Collection Act provide that a person commits an offence of strict liability or contravenes a civil penalty provision when a person fails to meet certain requirements prescribed by the Secretary in the Collection Rules.

Sections 17 and 18 of the Collection Act provide that a person commits an offence of strict liability or contravenes a civil penalty provision if, respectively:

- the person is required to give a return or written notice under the rules and fails to give a return to the Secretary, or to give a written notice to a person in accordance with the rules; or
- the person is required to make or keep records under the rules and fails to make or keep records in accordance with the rules.

Each offence is subject to 60 penalty units, and each civil penalty is subject to a civil penalty of 60 penalty units.

The requirements to give returns, and to make and keep records, are directed towards ensuring the expeditious payment of levy and charge, which is central to the integrity of the agricultural levy and charge system. It is appropriate therefore that non-compliance with these requirements be subject to offences and civil penalty provisions.

The principles in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide) were considered in framing the provisions in the Collection Act, including the strict liability offences and civil penalty provisions. The offences and civil penalty provisions provide for a graduated set of sanctions that take into account the gravity of the offences and the seriousness

of the conduct that gives rise to the offences. The strict liability offences and civil penalty provisions are therefore consistent with the Guide and are appropriate.

The Collection Act also triggers compliance and enforcement provisions in the *Regulatory Powers (Standard Provisions) Act 2014* and thus enables the department to take appropriate and proportionate action in response to non-compliance with the Collection Act and the Collection Rules.