

Wool Services Privatisation (Wool Levy Poll) Regulations 2003 2003 No. 50

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 50

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

Wool Services Privatisation Act 2000

Wool Services Privatisation (Wool Levy Poll) Regulations 2003

Sub-section 39(1) of the *Wool Services Privatisation Act 2000* (the 'Act') provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Act provides for the conversion of the Australian Wool Research and Promotion Organisation ('AWRAP') from a statutory authority into a Corporations Law company, called Australian Wool Services Limited ('AWS'). Division 7 of the Act provides for the Commonwealth to provide funding to a research body to conduct research and development activities and other activities for the benefit of Australian woolgrowers.

The funding is provided under a contract (the Funding Contract) to be entered into by the Minister, on behalf of the Commonwealth, with the research body (or with the research body and other persons). The Act provides for the appropriation of payments of wool levy to be made under the Funding Contract.

The *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* contain clauses to set the rate of the levy (rate setting clauses) and also provide for the making of regulations to impose levies and charges by way of excise duties and customs duties in respect of certain products of primary industry. The initial rates of wool levy were set by regulations at the 13 December 2000 Executive Council meeting. Under the rate setting clauses, before the Governor-General makes a regulation to impose a levy or charge in relation to a product, the Minister must take into consideration any relevant recommendation made to the Minister by a designated body in relation to the product. Australian Wool Innovation Pty Limited, now known as Australian Wool Innovation Limited (AWI) has been declared by the Minister to be the research body for the purposes of Division 7 of the Act. Subsection 32(1) of the Act further provides that the 'research body' is taken to be the designated body.

Sub-section 32(2) of the Act requires that before 1 January 2004, the research body must make a single recommendation for the purposes of the rate-setting clauses. Sub-section 32(3) requires the research body to continue to make recommendations in relation to the rate-setting clauses so that each recommendation is made not later than the third anniversary of the previous recommendation. Sub-section 32(4) requires that before making each recommendation, the research body must conduct a poll in accordance with the regulations. The recommendation must be in accordance with the results of the poll. Sub-section 32(5) provides that this section does not apply in relation to the regulations that initially imposed the wool levy.

The purpose of the regulations is to set out the requirements for the conduct of a poll of wool levy payers under section 32 of the Act to enable AWI to make a recommendation in relation to the amount of wool levy.

The regulations set out among other things:

- the eligibility of entities to participate in the poll and their voting entitlements;
- the timing of the poll;
- that the research body must propose 3 to 5 different rates of wool levy, including a zero rate;
- that the information memorandum must set out, for each rate listed on the ballot-paper, the funds the research body estimates it will receive for that rate, and how it is proposes to expend those funds;
- that the ballot-paper, voting instructions and information memorandum must be in a form approved by the Minister;
- that the research body has consulted, in the preparation of the draft forms, with a representative, or representatives, of the entities that will be eligible to vote in the poll;
- that the research body has confirmed that the draft forms and the process for conducting the ballot have been examined and assessed as appropriate by a panel;
- the manner in which the votes are to be counted (using the optional preferential system); and
- the form of the research body's report to the Minister to accompany the recommendation.

Details of the regulations are set out in the Attachment.

The regulations commence upon gazettal.

ATTACHMENT

WOOL SERVICES PRIVATISATION (WOOL LEVY POLL) REGULATIONS 2003

Regulation 1 gives the name of the regulations as the Wool Services Privatisation (Wool Levy Poll) Regulations 2003.

Regulation 2 provides that the regulations would commence on gazettal.

Regulation 3 states that the object of the regulations is to set out the requirements for the conduct of a poll under section 32 of the *Wool Services Privatisation Act 2000* in relation to the amount of wool levy.

Regulation 4 provides definitions of terms used in the regulations, namely the Act, entity, cut-off date, funding contract, information memorandum, intermediary, poll, poll year, research body, return date, voting instructions and wool levy.

Regulation 5 provides that an entity is eligible to vote in a wool levy poll if it has paid wool levy totalling at least \$100 during the three financial years before the year in which the poll is conducted. This does not include entities who have paid wool levy as an intermediary. It also provides that a trustee of the estate of an individual who dies before the cut-off date for a poll is eligible to vote in the poll provided the individual, or the individual and the estate collectively, have paid at least \$100 in wool levy during the three financial before the poll.

Regulation 6 states that an entity who is eligible to vote in a poll, or a trustee of the estate of an individual who has died before the cut-off date for a poll, is entitled to 1 vote for each whole \$100 of wool levy paid.

Regulation 7 requires the research body to determine a cut-off date and a return date for the poll, and that the cut-off date must be at least 8 weeks before the return date. The research body must determine an entity's entitlement to vote based on information available to it as at the cut-off date. The return date is the date by which the completed ballot-paper must be returned to the research body. The following is an example of a reasonable timetable to complying with regulations 7 & 8:

- 1 June - invite producers to submit information about wool levy they have paid in the previous three financial years;
- 1 August - cut-off date and last date for producers to provide information about the amount of wool levy they have paid in the previous three financial years;
- 29 August - company to complete its determination of each entity's eligibility to vote and voting entitlement and mails out ballot papers;
- 13 October - return date for ballot papers.

This regulation also allows the research body to vary the return date in unusual circumstances which may impact on eligible entities' ability to return their ballot papers to the research body by the return date. These circumstances are listed as circumstances that were unforeseen when the return date was determined or are circumstances outside the control of the entity or entities. (eg widespread regional flooding).

Regulation 8 requires the research body to determine the eligibility and voting entitlement of each entity who is to participate in the poll as at the cut-off date. It specifies the information it may use in determining eligibility, and allows the research body to invite, in any manner it chooses (including publishing a notice in 1 or more newspapers), entities it considers may be

eligible to vote to provide information that would demonstrate their eligibility. It requires the research body not to send out ballot-papers until it has allowed a reasonable period for such information to be provided and processed. It allows the research body to determine an entity's eligibility or entitlement by referring to the amount of wool levy the entity had paid in another financial year (outside the years specified as the three years prior to the poll). This is to ensure that, should the poll be conducted before three consecutive years of wool levy information is available to the research body, the research body could request and validly determine eligibility and voting entitlements based on earlier wool tax or levy records.

Regulation 9 requires the research body to propose 3 to 5 different wool levy rates at the poll, that this must include a zero rate and that each of these rates must be a whole multiple of 0.5. This is to give wool levy payers real choices as to their preferred levy rate, including allowing them the opportunity to indicate they no longer wish to pay compulsory levies.

Regulation 10 sets out how the research body is to conduct the poll. It requires that no later than 6 weeks before the return date and after the cut-off date, the research body must send to each eligible entity a ballot paper, a copy of the voting instructions, a copy of the information memorandum and a reply-paid envelope addressed to the research body.

Regulation 11 states that the ballot-paper sent to each entity must set out the name of the entity, its voting entitlement and the rates proposed by the research body referred to in regulation 9.

Regulation 12 specifies that the voting instructions to an entity must state that the entity must write the number '1' in the square next to their preferred rate on the ballot-paper, and that they may indicate their preference for other rates set out in the ballot paper. Entities are also required to place the completed ballot-paper in the reply-paid envelope and return it to the research body by the return date specified in the voting instructions.

Regulation 13 requires that the information memorandum for the poll must set out the amount of funds the research body estimates it will receive under each rate of levy and how it proposes to expend the funds, for each of the rates listed. It also requires the research body to recommend a rate from those listed, the reasons for the recommendation and for it to provide any other information the research body considers appropriate.

Regulation 14 requires the ballot-paper, voting instructions and information memorandum to be in a form approved by the Minister and that drafts must be submitted to the Minister at least 8 weeks before the cut-off date. It also requires the research body to satisfy the Minister that it has consulted in the preparation of the draft forms with a representative or representative of the eligible entities and that the research body has confirmed that the draft forms and the process for conducting the ballot have been examined and assessed as appropriate by a panel. The research body and a representative or representatives of an entity eligible to vote in the poll are to agree on the composition of the panel and the panel must include a representative or representatives of an entity eligible to vote in the poll.

Regulation 15 sets out the procedures an eligible entity must follow to record a valid vote. It requires an entity to write the number '1' in the square next to its preferred rate on the ballot-paper, and that the entity may indicate its preference for other rates set out in the ballot paper by writing the numbers 2, 3 and so on in the squares of as many remaining rates as it wishes.

Regulation 16 provides that a faxed ballot-paper is valid only if every paper of the ballot-paper clearly identifies the entity to which it is issued and all pages are received by the research body. It also sets out the procedures the research body must follow in the event multiple copies of the same ballot-paper are received.

Regulation 17 provides that the research body must appoint an individual with relevant experience to be the returning officer for the poll and the returning officer may appoint assistant returning officers to assist in counting votes in the poll. The returning officer must not be an employee of the research body, or an entity, or an associate of an entity entitled to vote in the poll. Associates are defined as members of the entity's family (in the case where the entity is an individual), an employee of the entity, an entity connected with the entity in question, or an associate of the entity as defined in the *Corporations Act 2001* (in the case where the entity is a corporation), or a beneficiary of a trust administered by the entity.

Regulation 18 describes the process the returning officer must follow when counting the votes - it describes the means of determining the outcome of the "optional preferential" system of voting as set out in regulation 15. It provides that at the close of polling, the returning officer must add the number of first preference votes represented by the ballot-papers for each rate proposed. If one of the rates specified as a first preference has a majority of votes, the returning officer must declare it to be the rate that the research body must recommend (as required under 32(4) of the *Wool Services Privatisation Act 2000*). This regulation then sets out the procedures the returning officer must follow if no rate has a clear majority of first preference votes.

Regulation 19 describes the form of the report to accompany the research body's recommendation. It provides that the report must be accompanied by a summary of the results of the poll and a statement as to how the recommendation is in accordance with the results of the poll.