

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

Primary Industries Levies and Charges Collection Act 1991
Primary Industries Research and Development Act 1989

Primary Industries Levies and Charges Legislation Amendment (Fodder) Regulation 2016

Legislative Authority

The *Primary Industries Levies and Charges Collection Act 1991* relates to the collection of primary industries levies and charges imposed by various Acts. Section 30 of this Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or that are necessary or convenient for carrying out or giving effect to the Act.

The *Primary Industries Research and Development Act 1989* relates to provision for the funding and administration of research and development relating to primary industries. Section 149 of this 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.

Purpose

The purpose of the *Primary Industries Levies and Charges Legislation Amendment (Fodder) Regulation 2016* is to authorise the Australian Government Department of Agriculture and Water Resources to collect an export charge on fodder products and enable any funds raised by this export charge to be paid to the Rural Industries Research and Development Corporation (RIRDC).

Background

Matching government contribution for a new export fodder research and development levy was announced by the former Prime Minister and the Minister for Agriculture and Water Resources as part of the Agricultural Competitiveness White Paper in July 2015.

Currently, research and development for the fodder industry is funded by voluntary contributions made by fodder producers, primarily those that are exporters, to RIRDC. Despite an agreement among exporters to share the cost of this research and development, these voluntary contributions are not made on an equitable basis. Nor do the contributions meet the total cost of the fodder research and development programme, requiring the shortfall to be made up from RIRDC's core funding. RIRDC has indicated that it may not fund the export fodder research and development programme following a scheduled review in June 2017. The mandatory collection of an equitable charge on exported fodder would ensure continued funding is provided for the RIRDC fodder crops programme and eliminate the need for supplementary funds from RIRDC's core funding. For the purposes of this regulation, fodder exporters are defined as the producer of leviable fodder.

Impact and Effect

The Regulation will impose an export charge on all fodder producers, including those producers that currently do not contribute to the voluntary levy through RIRDC. Those producers that do currently pay the voluntary levy will be required to use the Department of Agriculture and Water Resources online levy return system, rather than making direction contributions to RIRDC. The imposition of a charge on export fodder will improve the fodder research and development system by ensuring that all fodder producers contribute proportionately to the statutory levy scheme based on their level of participation within the industry. The Regulation will allow for the expansion of the current fodder research and development programme to include wider industry-good research and provide greater return on investment than current voluntary arrangements.

The Regulation will define who is a producer and what must be included in a return. The Regulation will set out certain accounting records to be kept by RIRDC for the funding of R&D activities relating to the export fodder industry. The Regulation will, in part, stipulate what records must be kept by producers and that an offence against those provisions is an offence of strict liability.

The inclusion of a strict liability offence for record keeping is in line with the principles set out in *'A guide to framing Commonwealth offences, infringement notices and enforcement powers'*. This provision would be likely to enhance the effectiveness of the enforcement regime, as record keeping would be essential to ensure that the charge is paid by producers at the correct rate. Strict liability for this purpose would ensure that the export charge is collected on an equitable basis, which is a key objective of imposing a mandatory export fodder charge to fund industry research and development. The offence would be 10 penalty units, and would therefore meet the requirement that the fine does not exceed 60 penalty units for an individual. Producers will be advised of the record keeping requirements so they can guard against the possibility of any contravention.

Consultation

The Department of Agriculture and Water Resources worked with the Australian Fodder Industry Association (AFIA) as AFIA developed its proposal for the export fodder levy. AFIA consulted extensively with its members in setting the rate of the export charge and determining research priorities to be funded by the collected charge. No exceptions to the levy proposal were received by the department, the Minister for Agriculture and Water Resources, AFIA or RIRDC.

The Department consulted the Office of Best Practice Regulation to develop a Regulation Impact Statement (RIS). The RIS was assessed as best practice and will be available on the Best Practice Regulation Updates website.

Details

Details of the Regulation is set out in the [Attachment A](#).

The Regulation is 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 Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Primary Industries Levies and Charges Legislation Amendment (Fodder) Regulation 2016*

Section 1 – Name

This section provides that the name of the Regulation is the *Primary Industries Levies and Charges Legislation Amendment (Fodder) Regulation 2016*.

Section 2 – Commencement

This section provides for the Regulation to commence as follows:

Sections 1 to 4 and anything in this instrument not elsewhere covered by this section commence the day after this instrument is registered.

Schedule 1, Part 1 commences the day after this instrument is registered.

Schedule 1, items 3 and 4 commence the day after this instrument is registered.

Schedule 1, item 5 commences the day after the commencement of Schedule 1, items 3 and 4.

Section 3 – Authority

This section provides that the Regulation is made under the *Primary Industries Levies and Charges Collection Act 1991* and the *Primary Industries Research and Development Act 1989*.

Section 4 – Schedules

This section provides that the proposed Regulation is amended 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

Part 1 outlines the main amendments to the *Primary Industries (Customs) Charges Regulations 2000*.

Item 1 inserts a new Part 11 relating to fodder into Schedule 37 to the *Primary Industries (Customs) Charges Regulations 2000*.

Clause 11.1 provides that this Part relates to chargeable fodder.

Clause 11.2 provides that ‘export fodder’ means fodder on which charge is imposed by Part 5 of Schedule 14 to the Customs Charges Regulations.

Clause 11.3 provides that, as per paragraph (e) of the definition of producer in subsection 4(1) of the Collection Act, chargeable fodder is prescribed, and the person who owned the

chargeable fodder immediately before the export in respect of which the charge is imposed is taken to be the producer of the chargeable fodder.

The note states that paragraph (e) of the definition of producer in subsection 4 (1) of the Collection Act provides that, for a product prescribed for that paragraph, producer means the person who, under the regulations, is taken to be the producer of the product.

Clause 11.4 specifies that the charge payable on chargeable fodder for a quarter is due for payment:

- (a) if a return is lodged within the period mentioned in clause 11.7—on the day the return is lodged; or
- (b) if a return is not lodged within the period mentioned in clause 11.7—on the last day of that period.

Clause 11.5 specifies that a producer who is liable to pay charge on chargeable fodder for a quarter must lodge a return for the quarter.

Clause 11.6 specifies that a return for a quarter must be lodged within 28 days after the end of the quarter to which it relates. The note states that section 24 of the Collection Act provides information on offences in relation to returns.

Clause 11.7 specifies that a return for a quarter must state, in respect of the quarter:

- (a) the quantity, in tonnes, of chargeable fodder exported; and
- (b) the amount of charge payable for the chargeable fodder; and
- (c) the amount of charge paid for the chargeable fodder.

Clause 11.8 sets out records that must be kept by a producer of chargeable fodder. Subclause (1) sets out that for each quarter, records must be kept of:

- (a) the quantity, in tonnes, of chargeable fodder exported by the person; and
- (b) the amount of charge payable for the chargeable fodder; and
- (c) the amount of charge paid for the chargeable fodder; and
- (d) if the chargeable fodder was exported by an exporting agent—the following details about the exporting agent:
 - (i) the agent's full name;
 - (ii) the agent's business or residential address (not the address of a post office box or post office bag);
 - (iii) the agent's ABN, if any;
 - (iv) if the agent is a company and does not have an ABN—its ACN; and
- (e) a copy of the return for the quarter.

The penalty for breaching this clause is 10 penalty units.

Subclause (2) specifies that an offence under subclause (1) would be an offence of strict liability.

Note 1 states that section 6.1 of the Criminal Code sets out details on strict liability.

Note 2 states that regulation 12 provides details on offences in relation to how long records must be kept.

Item 2 adds a new Division 13 relating to fodder into Part 2 to the *Rural Industries Research and Development Corporation Regulations 2000*.

Clause 43 sets out definitions for ‘fodder’ and ‘fodder industry’. ‘Fodder’ has the same meaning as in Part 5 of Schedule 14 to the *Primary Industries (Customs) Charges Regulations 2000*. ‘Fodder industry’ means the part of the primary industry referred to in paragraph 6(1)(k) that is concerned with the production of fodder for export.

Clause 44 attaches the export charge to the Rural Industries Research and Development Corporation.

Subclause 1 sets out that for paragraph 5(1)(a) of the PIRD Act, the charge imposed by clause 5.2 of Schedule 14 to the *Primary Industries (Customs) Charges Regulations 2000* is a levy attached to the Corporation.

Subclause 2 sets out that for paragraph 5(3)(a) of the PIRD Act, the whole of the levy is the research component of the levy.

Subclause 3 sets out that for paragraph 5(3)(b) of the PIRD Act, the fodder industry is the primary industry to which the levy relates.

Clause 45 specifies accounting records that must be kept for the fodder levy.

Subclause 1 sets out that for paragraph 40(1)(a) of the PIRD Act, the Corporation must keep separate accounting records of the funding of R&D activities relating to the fodder industry.

Subclause 2 sets out that for paragraph 40(1)(b) of the PIRD Act, the following amounts must be credited in the accounting records kept under subregulation (1):

- (a) amounts of levy mentioned in subregulation 44(1) that are received by the Commonwealth under the Collection Act and paid to the Corporation under paragraph 30(1)(a) of the PIRD Act;
- (b) amounts paid to the Corporation by the Commonwealth under paragraph 30(1)(b) of the PIRD Act;
- (c) amounts received by the Corporation as contributions to the cost of R&D activities relating to the fodder industry;
- (d) amounts received by the Corporation:
 - (i) from the sale of property paid for in connection with research and development relating to the fodder industry; or
 - (ii) from the sale of property produced in connection with research and development relating to the fodder industry; or
 - (iii) from dealing with patents in respect of inventions made in connection with, or intellectual property arising out of, research and development relating to the fodder industry; or
 - (iv) in respect of work paid for in connection with research and development relating to the fodder industry;
- (e) amounts paid to the Corporation as interest on investment of an amount mentioned in any of paragraphs (a) to (d).

Subclause 3 sets out that for paragraph 40(1)(b) of the PIRD Act, all amounts specified in section 33 of the PIERD Act that are required to be paid by the Corporation in relation to the fodder industry are to be debited in the accounting records kept under subregulation (1).

Subclause 4 sets out that for subsection 40(2) of the PIRD Act, the only R&D activities on which amounts credited under subregulation (2) can be spent are R&D activities relating to the fodder industry.

Part 2 details other amendments to the *Rural Industries Research and Development Corporation Regulations 2000*.

Item 3 repeals the definition of the PIERD Act in Regulation 5.

Item 4 inserts a new definition to Regulation 5 to state that the ***PIRD Act*** means the *Primary Industries Research and Development Act 1989*.

Item 5 applies to the whole of the Regulations. It omits every occurrence of “PIERD Act” and substitutes “PIRD Act”.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Primary Industries Levies and Charges Legislation Amendment (Fodder)
Regulation 2016**

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 Levies and Charges Legislation Amendment (Fodder) Regulation 2016* is to authorise the Australian Government Department of Agriculture and Water Resources to collect an export charge on certain fodder products and enable any funds raised by this export charge to be paid to the Rural Industries Research and Development Corporation for research.

Human rights implications

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

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Barnaby Joyce MP
Deputy Prime Minister and Minister for Agriculture and Water Resources