

EXPLANATORY STATEMENT

Primary Industries Levies and Charges Collection Act 1991

Primary Industries Levies and Charges Collection (Other Collection Product Details) Determination 2017

Legislative Authority

Subsection 27A(3) of the *Primary Industries Levies and Charges Collection Act 1991* (the Act) provides that the Secretary of the Department of Agriculture and Water Resources (the Secretary) may, for the purposes of paragraph 27A(1)(c) of the Act, by legislative instrument, determine details relating to the production or processing of a collection product.

Paragraph 27A(1)(c) of the Act provides that an authorised person may give any such other details determined in an instrument under subsection 27A(3) relating to the production or processing of a collection product to an eligible recipient.

Purpose

The purpose of the *Primary Industries Levies and Charges Collection (Other Collection Product Details) Determination 2017* (the Determination) is to determine details relating to the production or processing of a collection product.

The Determination specifies details relating to the production and processing of various collection products as set out in the Schedules.

These details in the Determination may be disclosed to certain bodies prescribed by the Act by an authorised person appointed by the Secretary.

Background

The Act provides for the efficient and effective collection of primary industries levies and charges.

The *Primary Industries Levies and Charges Collection Amendment Act 2016* (the Amendment Act) introduced new provisions to the Act which allow the Department of Agriculture and Water Resources (the department) to provide levy and charge payer (levy payer) information to the research and development corporations (RDCs) and declared industry bodies for the purpose of developing levy payer registers.

Any information given to an eligible recipient by an authorised person may be used for purposes prescribed by section 27B of the Act, which include to maintain a register of levy payers or charge payers, to maintain a register of those persons eligible to vote in any poll conducted by or on behalf of the body, make public any information of a statistical nature, and perform any of its functions.

Australian Wool Innovation Limited (AWI) is the declared research body under section 30 of the *Wool Services Privatisation Act 2000* and is an eligible recipient as defined in paragraph 27A(2)(k) of the Act.

Dairy Australia (DA) is the declared industry services body paragraph under section 7 of the *Dairy Produce Act 1986* and is an eligible recipient as defined in paragraph 27A(2)(e) of the Act.

DA and AWI each have an existing levy payer register.

The making of this Determination is not intended to require an authorised person to give all or any of these details to an eligible recipient.

The provision of this information by an eligible recipient to any third party is subject to the Secretary's approval being provided under subsection 27B(4) of the Act.

Impact and Effect

Schedules 1 and 2 to the Determination specify details relating to the production and processing of the collection products – relevant dairy produce and wool, respectively.

The details set out in Schedules 1 and 2 to this Determination facilitate continuation of DA and AWI's existing levy payer registers. These registers held information disclosed under previous provisions which enabled an authorised person to give levy payer information to them.

Schedule 1 to the Determination specifies details relating to the production and processing of relevant dairy produce, a collection product, which an authorised person may give to an eligible recipient. The Determination provides that these details are the number assigned to identify individual producers by a manufacturer, the number issued by the relevant State or Territory food safety authority to a farm enterprise, the name used by a producer to trade under, and the proportion of the amount a producer paid, or is liable to pay, in levy out of the total amount of levy paid, or is liable to be paid, for a farm enterprise.

DA has informed the department that the details in the Determination, if given to it, may assist to facilitate the successful operation of its levy payer register and to carry out its functions.

Schedule 2 to the Determination specifies details relating to the production and processing of wool, a collection product, which an authorised person may give to an eligible recipient. The Determination provides that these details are the information relating to the weight of wool as obtained from a return given to the Department pursuant to provisions of Part 2 of Schedule 37 to the Regulations, the name and ACN of the business operated by the producer for the export, sale or use of the wool, the name and physical address of the property on which the lambs or sheep were shorn for that wool.

AWI has informed the department that the details in the Determination, if given to it, may assist to facilitate the successful operation of its levy payer register and to carry out its functions.

Consultation

AWI and DA were consulted throughout the development of this Determination and support it being made to ensure their existing levy payer registers and functions can continue. AWI and DA provided advice on the particular wool and dairy levy payer information, and definitions for that information, required for this Determination. The advice provided by AWI and DA was accepted and is reflected in the Schedules to the Determination.

Regulatory Impact Assessment requirements

The Office of Best Practice Regulation has been consulted and advised that a Regulation Impact Statement is not required (OBPR ID 22578).

Details/ Operation

Details of the Determination are set out in Attachment A.

Other

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

Details of the *Primary Industries Levies and Charges Collection (Other Collection Product Details) Determination 2017*

Section 1 – Name

This section provides that the name of the Determination is the *Primary Industries Levies and Charges Collection (Other Collection Product Details) Determination 2017*.

Section 2 – Commencement

This section provides that the Determination commences on the day after it is registered.

Section 3 – Authority

This section provides that the Determination is made under subsection 27A(3) of the Act.

Section 4 – Definitions

This section sets out the relevant definitions for the Determination. Some of these definitions refer to defined terms used in the Act and as in force from time to time.

Act

This definition provides that the ‘Act’ means the *Primary Industries Levies and Charges Collection Act 1991*.

Regulations

This definition provides that the ‘Regulations’ means the *Primary Industries Levies and Charges Collection Regulations 1991*.

Section 5 – Other details that an authorised person may give to an eligible recipient

This section provides that the details listed in the Schedules are details relating to the production of particular collection products.

Schedule 1– Relevant dairy produce

Clause 1 – Application

This clause provides that Schedule 1 applies in relation to relevant dairy produce.

Clause 2 – Definitions for Schedule 1

This section sets out the relevant definitions for Schedule 1 to the Determination.

farm enterprise

This definition provides that ‘farm enterprise’ means the property at which relevant dairy produce is produced.

producer

This definition provides that ‘producer’ has the meaning given by clause 5 of Schedule 10 to the Regulations as amended from time to time.

relevant dairy produce

This definition provides that ‘relevant dairy produce’ has the meaning given by clause 2 of Schedule 10 to the Regulations as amended from time to time.

Section 3 – Other details that an authorised person may give to an eligible recipient

This section sets out the details relating to the production or processing of relevant dairy produce that an authorised person may give to an eligible recipient.

The details are:

- a. the number assigned to identify individual producers by a manufacturer;
- b. the number assigned by the relevant State or Territory food safety authority to a farm enterprise;
- c. the name used by a producer to trade under; and
- d. the proportion of the amount a producer is paid, or is liable to pay, in levy out of the total amount of levy paid, or is liable to be paid, for a farm enterprise.

These details are used by DA to facilitate the successful operation of its levy payer register as they enable allocation of voting entitlements to levy payers according to the amount of levy paid and facilitate outreach to levy payers for activities relating to DA’s functions such as provision of extension services.

It is intended that an authorised person may give these details to an eligible recipient for use for any of the purposes permitted under subsections 27B(1) to (3) of the Act. This section and the Determination are not intended to require an authorised person to provide the other details to an eligible recipient.

Section 3 also includes a note to clarify that relevant dairy produce is a ‘collection product’ as defined in the Act. It also clarifies that a levy is imposed on relevant dairy produce by Schedule 6 to the *Primary Industries (Excise) Levies Act 1999*.

Schedule 2–Wool

Section 1 – Application

This clause provides that Schedule 2 applies in relation to wool.

Section 2 – Definitions for Schedule 2

This section sets out the relevant definitions for Schedule 2 to the Determination.

producer

This definition provides that the term ‘producer’ has the meaning given by subsection 4(1) of the Act and clause 2.6 of Schedule 37 to the Regulations as amended from time to time.

wool

This definition provides that ‘wool’ has the meaning given by clause 2.2 of Schedule 37 to the Regulations as amended from time to time.

Section 3 – Other details that an authorised person may give to an eligible recipient

This section sets out the details relating to the production or processing of wool that an authorised person may give to an eligible recipient.

The details are:

- a. information about the wool obtained from a return given to the Department pursuant to specified provisions of Part 2 of Schedule 37 to the Regulations;
- b. the name and ACN of the business operated by the producer for the export, sale or use of that wool; and
- c. the name and physical address of each property on which the lambs or sheep were shorn for that wool.

These details are used by AWI to facilitate the successful operation of its levy payer register as they enable allocation of voting entitlements to levy payers according to the amount of levy paid, facilitate communication activities with levy payers and may help inform investment decisions including around consideration of regional needs.

It is intended that an authorised person may give these details to an eligible recipient for use for any of the purposes permitted under subsections 27B(1) to (3) of the Act. This section and the Determination are not intended to require an authorised person to provide the other details to an eligible recipient.

Section 3 also includes a note to clarify that wool is a ‘collection product’ as defined in the Act. It also clarifies that a levy is imposed on wool produced in Australia by Part 2 of Schedule 27 of the *Primary Industries (Excise) Levies Regulations 1999* and that a charge is imposed on wool produced in Australia by Part 1 of Schedule 14 to the *Primary Industries (Customs) Charges Regulations 2000*. It is intended that the Determination applies to wool that has been produced in Australia on which a levy or charge has been imposed.

Statement of Compatibility with Human Rights

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

Primary Industries Charges and Collection (Other Collection Product Details) Determination 2017

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

This Legislative Instrument provides the other details relating to collection products that an authorised person may give to an eligible recipient under subsection 27A(1) of the *Primary Industries Levies and Charges Collection Act 1991* (the Act).

Subsection 27A(3) of the Act provides that the Secretary of the Department of Agriculture and Water Resources (the Secretary) may determine, for the purposes of paragraph 27A(1)(c), other details relating to the production or processing of a collection product. Paragraph 27A(1)(c) of the Act provides that an authorised person may give any such other details determined in an instrument under subsection 27A(3) relating to the production or processing of a collection product to an eligible recipient.

The purpose of the *Primary Industries Levies and Charges Collection (Other Collection Product Details) Determination 2017* (the Determination) is to determine the other details relating to the production or processing of relevant dairy produce and wool as collection products. The Determination provides that these details are:

- for relevant dairy produce: the number assigned to identify individual producers by a manufacturer, the number issued by the relevant State or Territory food safety authority to a farm enterprise, the name used by a producer to trade under, the proportion of the amount a producer paid, or is liable to pay, in levy out of the total amount of levy paid, or is liable to be paid, for a farm enterprise.
- for wool: information relating to the weight of wool as obtained from a return given to the Department pursuant to provisions of Part 2 of Schedule 37 to the Regulations, the name and ACN of the business operated by the producer for the export, sale or use of the wool, the name and physical address of the property on which the lambs or sheep were shorn for that wool.

Human rights implications

The Legislative Instrument may engage the right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). This right may be subject to permissible limitations, provided they are authorised by law and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the provisions, aims and objectives of the ICCPR, and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted 'reasonableness' in this context to imply that any interference with privacy must be

proportional to the end sought and be necessary in the circumstances of any given case. The collection, use, storage and sharing of personal information engages this right.

The Legislative Instrument determines other details regarding the production or processing of relevant dairy produce and wool as collection products that may be disclosed by an authorised person to an eligible recipient. It should be noted that by determining the other details that an authorised person may give to an eligible recipient, this Legislative Instrument does not require those details to be provided to an eligible recipient.

If an authorised person were to give those details to an eligible recipient, it may engage the right to protection against arbitrary and unlawful interferences with privacy. The information disclosed may sometimes be personal information, as defined by subsection 6(1) of the *Privacy Act 1988* (Privacy Act), and would allow for an individual to be identified and contacted by an eligible recipient. The authorisation of the use and disclosure of this information is provided for under law.

The Privacy Act regulates the handling of personal information about individuals and implements Australia's obligations, as a party to the ICCPR, regarding privacy. The Research and Development Corporations (RDCs), declared industry bodies and the Australian Bureau of Statistics (ABS) are considered Australian Privacy Principles entities and their use of personal information is therefore subject to the Australian Privacy Principles, which are outlined in Schedule 1 to the Privacy Act.

Further, section 27B of the Act sets out the purposes for which levy payer information provided to eligible recipients can be used. This is limited to matters relating to the development and maintenance of levy payer registers; the ability to make public any statistical, de-identified information; and for any functions required of the recipient under Commonwealth law or under a funding agreement between the body and the Commonwealth. On this basis, the disclosure of personal information under the Act is not arbitrary as it is only permitted for specific uses that relate directly to improving consultation, voting systems and the operations of an RDC or declared industry body or allow the ABS to fulfil its functions.

On this basis, the provisions in this Legislative Instrument are consistent with the right to protection against arbitrary and unlawful interferences with privacy under Article 17 of the ICCPR. These reasons were previously considered and accepted by the Parliamentary Joint Committee on Human Rights with respect to the Primary Industries Levies and Charges Amendment Bill 2016.

Conclusion

This Legislative Instrument is compatible with human rights because the limitations outlined above are reasonable, necessary and proportionate.

Daryl Quinlivan
Secretary of the Department of Agriculture and Water Resources