

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

Primary Industries (Excise) Levies Act 1999

Primary Industries (Excise) Levies (Designated Bodies) (Potted Plants) Amendment Declaration 2019

Legislative Authority

The *Primary Industries (Excise) Levies Act 1999* (Excise Levies Act) authorises the imposition of primary industries levies that are duties of excise.

Clause 13 of Part 4 of Schedule 27 to the Excise Levies Act provides that the Minister may, by writing, declare that a specified body is a designated body in relation to one or more specified products.

Purpose

The purpose of the *Primary Industries (Excise) Levies (Designated Bodies) (Potted Plants) Amendment Declaration 2019* (the Amendment Declaration) is to amend the *Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013* (the Declaration) to remove one industry representative body as a designated body and to declare a new designated body under clause 13 of Schedule 27 to the Excise Levies Act.

Greenlife Industry Australia Limited (GIA) was established on 1 July 2019 and has replaced Nursery and Garden Industry Australia Ltd (NGIA) as the peak industry body for nursery products. The Amendment Declaration removes NGIA from the Declaration and declares GIA to be the single designated body for potted plants, the item on which the nursery products levy is imposed.

Background

The Declaration declares 30 industry representative organisations to be designated bodies for specified products.

On 29 August 2019, GIA wrote to the Minister for Agriculture to request that GIA be declared the designated body for potted plants, on the basis that it has replaced NGIA as the industry representative body for nursery products. GIA has also replaced NGIA as the Plant Health Australia (PHA) industry member representing nursery products.

The declaration of GIA as a designated body does not prevent other industry bodies from making representations to the Minister on the introduction of, or amendment to, levies or and/or charges, or from seeking to become designated bodies for the same products.

Members of PHA are required to be declared as designated bodies in order to meet the definition of ‘relevant Plant Industry Member’ in section 3 of the *Plant Health Australia (Plant Industries) Funding Act 2002* (PHA Funding Act) which in turn enables:

- PHA levies or charges for a plant product that the body represents, as a PHA industry member, to be disbursed by the department to PHA (under section 4 of the PHA Funding Act)
- an Emergency Plant Pest Response (EPPR) fund for an EPPR plant product to be used by PHA to discharge a liability of the relevant Plant Industry Member to the Commonwealth in relation to relevant responses under the EPPR Deed or to make payments in relation to other emergency plant pest response purposes (under section 10C of the PHA Funding Act).

Impact and Effect

Clause 14 in Schedule 27 to the Excise Levies Act requires the Minister to take into consideration the recommendations provided to the Minister by a designated body before regulations may be made in relation to a product under Schedule 27 to the Act (for example to establish, or change, a relevant levy). For research and development or marketing levy types, a regulation made under Schedule 27 to the Excise Levies Act must not set a rate for a product higher than that recommended by the relevant designated body.

Section 3 of the PHA Funding Act defines, for the purposes of that Act, a *relevant Plant Industry Member* for a plant product as the Plant Industry Member that the Minister declares is the designated body for the plant product under:

- (a) clause 13 of Schedule 27 to the Excise Levies Act; or
- (b) clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.

The Amendment Declaration also ensures that GIA meets the definition of ‘*relevant Plant Industry Member*’ in the PHA Funding Act, thereby providing clear legislative authority for the Commonwealth to make levy or charge disbursement payments to PHA under section 4 of the PHA Funding Act, and for PHA to use the EPPR fund for relevant EPPR plant products to make payments in relation to emergency plant pest responses.

There are no practical or procedural implications for levy or charge payers. PHA levies will continue to be collected by the Commonwealth. The levy amounts that industry members pay, and the mechanisms through which they are paid, have also not changed.

Consultation

On 12 June 2019, members of NGIA voted (90 per cent in favour) to establish a new industry representative body. GIA was subsequently established on 1 July 2019. On 29 August 2019, GIA wrote to the Minister for Agriculture to request that GIA be declared the designated body for potted plants.

Following GIA’s request to the Minister, the department consulted with NGIA and PHA on the proposed amendment. On 30 September 2019, PHA confirmed that its Board had approved the admission of GIA as a plant industry member of PHA, replacing NGIA. On 1 October 2019, NGIA confirmed its support for the amendment, including its removal as the designated body for potted plants.

The Office of Best Practice Regulation (OBPR) advised that a regulation impact statement is not required (OBPR ID 25689).

Details / Operation

Details of the Amendment Declaration are set out in Attachment A.

The Amendment Declaration 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 the Attachment B.

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

The Amendment Declaration commences on the day after registration.

Authority: Clause 13 of Part 4 of Schedule 27 of the Excise Levies Act

Details of the Primary Industries (Excise) Levies (Designated Bodies) Amendment Declaration 2019

Section 1 – Name

This section provides that the name of the instrument is the *Primary Industries (Excise) Levies (Designated Bodies) (Potted Plants) Amendment Declaration 2019*.

Section 2 – Commencement

This section provides that the instrument commences the day after the instrument is registered.

Section 3 – Authority

This section provides that the instrument is made under clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*.

Section 4 – Schedule

This section provides that the instrument specified in the Schedule is amended or repealed as set out in the applicable items in the Schedule concerned and any other item in a Schedule has effect according to its terms.

Schedule 1

Primary Industries (Excise) Levies (Designated Bodies) Determination 2013

Item 1 – Section 4 (table item 27)

This item repeals the cell in column 1 of table item 21, which has the effect of removing Nursery and Garden Industry Australia Ltd (ABN 37 001 318 136) as the designated body for potted plants. The item replaces that cell with “Greenlife Industry Australia Limited (ABN 59 634 584 017)” declaring that organisation to be the designated body for potted plants for the purposes of Part 4 of Schedule 27 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 (Excise) Levies (Designated Bodies) (Potted Plants) Amendment Declaration 2019

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 (Excise) Levies (Designated Bodies) (Potted Plants) Amendment Declaration 2019* is to amend the *Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013* to remove Nursery and Garden Industry Australia Ltd (ABN 37 001 318 136), and add Greenlife Industry Australia Limited (ABN 59 634 584 017), as the designated body for potted plants.

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.

**Senator the Hon Bridget McKenzie
Minister for Agriculture**