

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Northern Australia

Primary Industries (Excise) Levies Act 1999

Primary Industries (Excise) Levies Amendment (Forest Growers Levies) Regulations 2022

Legislative Authority

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

Section 8 allows the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Part 2 of Schedule 27 to the Act provides that regulations may impose a levy on specified primary industry products, in circumstances in accordance with the regulations. Parts 3 and 4 of Schedule 27 provide that the regulations may impose the rate of levy; may express the rate of levy as equal to the sum of prescribed components; and may provide for exemptions from a levy.

Part 8 of Schedule 27 to the *Primary Industries (Excise) Levies Regulations 1999* (the Principal Regulations) imposes forest growers levies on certain logs in accordance with Schedule 27 to the Act.

Purpose

The purpose of the proposed *Primary Industries (Excise) Levies Amendment (Forest Growers Levies) Regulations 2022* (the Regulations) is to implement changes to forest growers levies requested by industry. The amendments introduce a new research and development (R&D) levy component; increase the rate of Plant Health Australia (PHA) levy; and introduce a volume-based levy payer exemption for liability to pay forest grower levies.

Levies are introduced, administered and collected by the Australian Government, usually at the request of the industry. The Department of Agriculture, Water and the Environment, on behalf of the Commonwealth, collects the levy and disburses the funds to the relevant recipient body under powers provided by legislation.

Research & Development (R&D) component

The new R&D levy component is intended to enable the funding of R&D to support the Australian forest growing industry in reducing costs, increasing productivity, and avoiding

losses associated with pests, diseases, and severe weather events. This component would be additional to the existing levy imposed by Division 8.1 of Part 8 of Schedule 27 to the Principal Regulations, and would be implemented in annual phases over a three-year period, with the first year of introduction intended to begin on 1 July 2022.

Plant Health Australia Limited (PHA) levy increase

The increase to the PHA levy is intended to fund responses to the biosecurity challenges facing the Australian plantation forest growing industry that are not able to be addressed adequately with the current level of funding to PHA. The increase will raise the rate of levy imposed by this subsection by 4.5 cents to 5 cents per cubic metre of the log, beginning 1 July 2022.

Levy payer exemption

The new levy payer exemption is intended to simplify levy administration and improve equity amongst growers by reducing the instances of levies being collected in circumstances where the costs of collection exceed the value of the levies collected. The exemption would exempt a producer of logs from payment of a levy if they produce less than 20,000 cubic metres of leviable logs in relation to a levy year starting on 1 July 2022 or later.

Background and Consultation

The Australian Forest Products Association Ltd (the Association) is the peak national body for Australia's forest, wood and paper products industry. On 13 July 2021 the Association requested that government introduce the R&D levy component and increase the PHA levy rate in order to respond to increasing challenges and opportunities in forestry research, development, extension and biosecurity. The Association also recommended the introduction of a levy exemption threshold to simplify administration and improve equity amongst forest growers.

The measures in the Regulations were developed with extensive consultation across the Australian forest grower community, in accordance with the *Levy guidelines: How to establish or amend agricultural levies*.

The consultation process provided opportunity for the contribution of persons with expertise in fields relevant to the proposed instrument, including input from the Institute of Foresters of Australia/Australian Forest Growers (since renamed Forestry Australia), a professional association representing approximately 1,000 forest scientists, managers, and growers. The then Institute of Foresters of Australia/Australian Forest Growers consulted with its members and provided advice to help inform the development of the proposal and invited its members to comment and register to vote on the proposal.

This consultation process conducted by the Association provided persons likely to be affected by the levy changes with adequate opportunity to comment on the introduction of the R&D levy component, PHA levy rate increase and new levy payer exemption. The Association conducted an extensive campaign across traditional and new forms of outreach and media to inform interested parties of the proposed changes. Directly interested parties were asked to register for the consultation and voting process, during which registrants were invited to

provide feedback and vote in an independently conducted poll. Each of the three questions in the poll related to one of the proposed changes. For all three questions, 90% of the votes (46 of 51 valid votes) answered in support of the proposed change. Over 95% of potential forest grower levy payers by log production volume supported the three proposals.

A public objection period was also held for the period of 30 business days after the date that the proposed changes were submitted to government.

No significant objections resulting in changes to the proposal were received during the consultation and polling process, nor during the objection period. One comment received in the ballot process stated that the levy was not directly relevant to the commenter as the activity to be funded “may be more East Coast of Australia specific”. The four other comments received in the ballot process considered the exemption threshold to be too high, of which three suggested that smaller growers should contribute and one suggested that the threshold would not simplify administration of the levy collection process. The Association conversely anticipates that the proposed threshold will still capture 96% of potential levy revenue (based upon the 2018-2019 log production levels of levy payers), while simplifying the administration process with fewer payees and minimising circumstances where administration costs exceed the levy amount collected.

The proposed R&D levy component was subject to consultation with the following Departments and Agencies: Attorney-General’s; Australian Bureau of Statistics; Education, Skills and Employment; Defence; Finance; Foreign Affairs and Trade; Home Affairs; Industry, Science, Energy and Resources; Infrastructure, Transport, Regional Development and Communications; National Indigenous Australians Agency; National Recovery and Resilience Agency; Prime Minister and Cabinet; Social Services; and Treasury. The proposed PHA levy increase was also subject to consultation with the Departments of Finance and Treasury.

The Office of Best Practice Regulation has been consulted and has advised that the costs for the operation of the proposal are expected to be minimal and has not advised that a Regulation Impact Statement is required (OBPR Reference number: 44327).

Consultation has not been undertaken on the specific instrument because the three measures in the Regulations are consistent with the three recommendations upon which the above consultation was conducted. Each amendment as expressed in the Regulations was reflected accurately in the poll questions through which interested parties indicated overwhelming support. The measures in the Regulation are therefore underpinned by the extensive consultation conducted by the Association in accordance with *Levy guidelines: How to establish or amend agricultural levies* and it was considered unnecessary to undertake additional consultation in relation to the specific instrument.

Compliance with Legislative Conditions

Recommendations of designated bodies

Item 14 of Schedule 27 to the Act provides several conditions on the making of regulations under Schedule 27 to the Act.

Item 13 of Schedule 27 to the Act provides that the Minister may declare in writing that a specified body is a designated body in relation to one or more specified products. Item 14(3)

provides that if there are two or more designated bodies then, before the Governor-General makes regulations, other than regulations reducing levy rates, the Minister must take into consideration any relevant recommendations made to the Minister by those bodies, so long as each designated body has made a relevant recommendation and all of the recommendations are the same.

There are three designated bodies for forest growers levies products. The Minister and Assistant Minister have received a formal recommendation from one of those designated bodies, the Association. The recommendation has been considered and the Regulations are consistent with the Association's recommendations relating to the R&D component, PHA levy increase and levy payer exemption.

Item 14(4) of Schedule 27 to the Act requires a designated body to consult any other bodies specified in the regulations before making a recommendation. No such bodies are specified.

Levying of taxation in delegated legislation

Schedule 27 to the Act provides the legislative authority to set the levy by way of regulations. Item 6 of Schedule 27 enables the regulations to prescribe the rate of levy. Item 7 of Schedule 27 enables the regulations to express the rate of a levy as equal to the sum of prescribed components.

Item 10 of Schedule 27 to the Act imposes a cap on the PHA levy, by prescribing the maximum rate of levy for plant products. It provides that the total rate or rates of levies must not exceed whichever is the greater of the following: \$5 per unit of the plant product; or 5% of the value of the plant product. Item 10(3) provides that the cap does not apply to the research and development component of a levy. The rate of levy will not exceed the cap imposed by Item 10 of Schedule 27 to the Act.

Item 14(5) also prohibits the regulations from prescribing a rate of levy (in respect of the marketing or research and development component of the levy) exceeding the rate recommended to the Minister by a designated body in accordance with items 14(2) or 14(3). The amount prescribed for the R&D component is the rate recommended by the Association.

It is necessary and appropriate to prescribe these levies in the Regulations because they have been requested by industry, after significant consultation with affected persons, for the benefit of industry. Providing for these matters in the Regulations enables industry requirements for forestry research, development and biosecurity to be addressed.

Impact and Effect

Increased funding for R&D and biosecurity has the potential to raise the forest growing industry's productivity and profitability.

The regulatory impacts associated with this instrument will be limited to business-related costs assumed by the proponents and beneficiaries of the measure. The benefits to participating businesses are expected to be significantly greater than the costs.

Details/Operation

Details of the Regulations including commencement details are set out in [Attachment A](#).

The Regulations are 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 Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the proposed *Primary Industries (Excise) Levies Amendment (Forest Growers Levies) Regulations 2022*

Section 1 – Name

This section provides that the name of the Regulations is the *Primary Industries (Excise) Levies Amendment (Forest Growers Levies) Regulations 2022*.

Section 2 – Commencement

This section sets out, in a table, the date on which the provisions contained in the Regulations would commence. This table provides that the whole of the instrument would commence on 1 July 2022.

Section 3 – Authority

This section provides that the Regulations are made under the *Primary Industries (Excise) Levies Act 1999*.

Section 4 – Schedules

The effect of this section is that the *Primary Industries (Excise) Levies Regulations 1999* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Primary Industries (Excise) Levies Regulations 1999

Item [1] – Clause 8.3 of Schedule 27

This item repeals the existing item 8.3, which provides the existing rate of levy imposed by this Division.

This item then substitutes a new item 8.3, which provides that the new rate of levy imposed by this Division is the sum of two components. The first component is a ‘general component’ of 5 cents per cubic metre of the log, which is equivalent to the existing levy. The second component is a new ‘research and development’ component.

The rate of the new research and development component will be introduced incrementally in annual phases over a three-year period. The component will be set at 3.5 cents per cubic metre in the first year of introduction, 6 cents per cubic metre in the second year and 8.5 cents

per cubic metre in the third and subsequent years. The first year of introduction is intended to begin on 1 July 2022.

The levy imposed under the new item 8.3 remains payable by the producer of the log, with collection and disbursement arrangements consistent with existing arrangements in Part 8 of Schedule 27.

Item [2] – Subclause 8.5(2) of Schedule 27

This item omits the existing rate of PHA levy imposed by this subsection and substitutes a new rate of levy of 5 cents per cubic metre of the log. This will raise the rate of levy imposed by this subsection by 4.5 cents per cubic metre of the log, beginning 1 July 2022.

Item [3] – At the end of Part 8 of Schedule 27

This item will include a new division 8.3 and item 8.7, which creates an exemption from liability to pay a levy imposed by Part 8 of Schedule 27. This item will provide that a producer of logs is exempt from liability to pay levy imposed by Part 8 of Schedule 27 to the Regulations, in relation to a levy year starting on 1 July 2022 or later, if the producer produces less than 20,000 cubic metres of leviable logs in the levy year.

Statement of Compatibility with Human Rights

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

Primary Industries (Excise) Levies Amendment (Forest Growers Levies) Regulations 2022

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 Amendment (Forest Growers Levies) Regulations 2022* (the Regulations) is to implement changes to forest growers levies proposed by industry. The amendments introduce a new research and development (R&D) levy component; increase the rate of the Plant Health Australia (PHA) levy; and introduce a levy payer exemption for certain forest grower levies.

The Regulations commence on 1 July 2022.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The measures in the Regulations are 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* as the Regulations do not engage any human rights issues.