

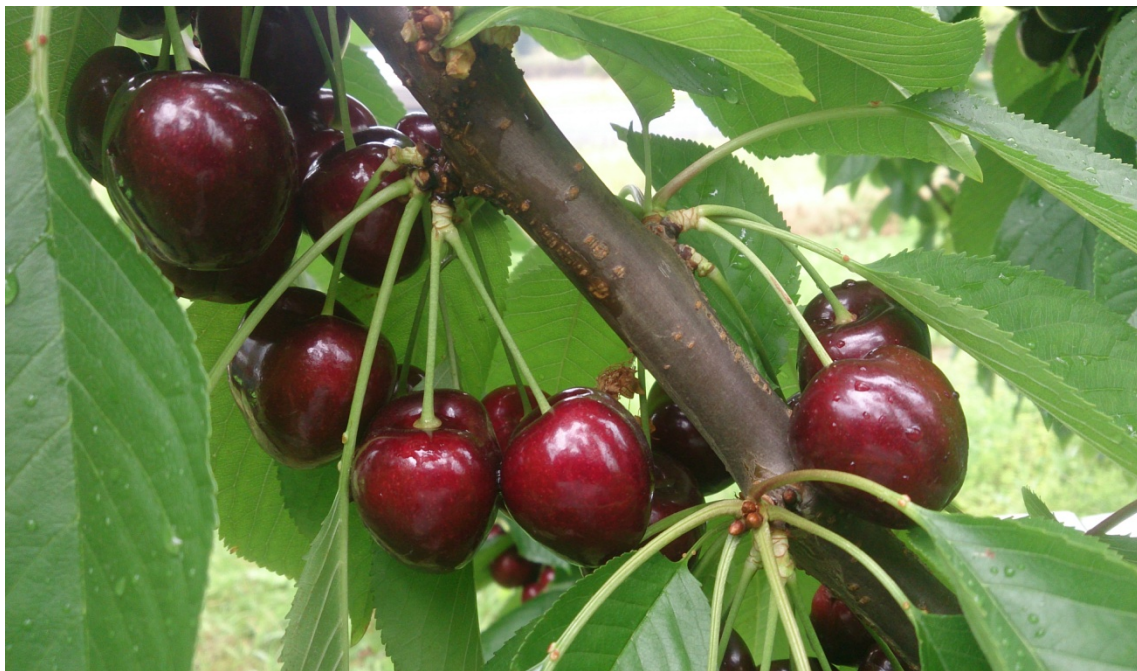


Cherry Growers Australia Inc

ABN 77797945686

Report to the Federal Minister on the review of current levies set by the Australian Cherry Industry and the levy vote held.

September 2018





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22nd of September 2018

Honorable David Littleproud, MP
Minister for Agriculture
Parliament House
Canberra ACT 2600

Dear Minister

I am writing to you as the President of Cherry Growers Australia, as a follow up to the previous correspondence sent to your office in May of this year. This followed correspondence to the preceding Minister for Agriculture and Water Resources, Barnaby Joyce in June 2016 and November 2017 (attached) on matters pertaining to a review of our levies for the Australian Cherry Industry.

In June 2016, a levy review had been undertaken by industry to seek amendment to the National Cherry Levy. The results of this Levy review were ultimately not approved by the Federal Government. This necessitated another Levy review that has been completed in 2017.

CGA would like to formally indicate to you that a review of our levy has been undertaken in accordance with the Department of Agriculture - Levy Principles and Guidelines document of January 2009.

The 2017 Levy review has seen feedback from industry that increased focus and funds allocation needs to be made to Research and Development activities that are essential to the future export aspirations of the Australian cherry industry. An increased R&D spend on treatment pathways to phytosanitary markets is essential if the Australian Cherry Industry is going to provide the data the Department of Agriculture and Water Resources require to continuing to open new and improve existing export markets.

That review has been completed and voted on by the Australian Cherry Industry in a ballot held from 27th of October 2017 to 10th of November 2017 by the Tasmanian Electoral office.

432 ballots were posted out to the industry prior to the voting period by the Tasmanian Electoral Commission.

The results provided back from the Tasmanian electoral office were 70 returned of which one was informal so 69 valid votes and a 16% return.

From the returned votes: Option 1: 49 votes counted in favor – 71%

This was a new levy structure to be approved of:

- 5.70 (Cents /Kilogram) for Research & Development that is matched \$ for \$ by the Australian Government;
- 0.30 (Cent /Kilogram) for Plant Health Australia Levy, that is not matched by the Australian Government;
- 1.00 (Cent /Kilogram) for Marketing & Promotional activities, that is not matched by the Australian Government;
- 0.00 (Cent /Kilogram) for the Emergency Plant Pest Response Deed levy that will be matched or otherwise as agreed to under regulations and agreements from the EPPRD;

Option 2: 20 votes counted in favor to keep the levy the same – 28.9%

Maintain the current levy split of 7Cents/Kilogram with minor adjustments on Research and Development and Plant Health Levy.

- Research and Development Levy at 3.80 (Cents /Kilogram) that is matched \$ for \$ by the Australian Government;
- Marketing and Promotions Levy of 3 (Cents /Kilogram) that is not matched by the Australian Government;
- Plant Health Australia levy set at 0.20 (Cents /Kilogram) that is not matched by the Australian Government;
- Emergency Plant Pest Response Levy set at 0.00 that will be matched or otherwise as agreed to under regulations and agreements from the EPPRD; (Cents /Kilogram).

There was one informal vote.

So under Australian Government - Levies Revenue Service - Levy Principles and Guidelines Paper 2009, in Section 3.2 G on page 6:

CGA does have a 50% plus one who chooses to vote in a one vote per producer ballot with the result provided to move forward for changes to the current levies and recommends that the Minister make these changes for the 2017/2018 and following seasons.

Cherry Growers Australia has received a request for additional information from Levies Revenue Service in seeking some clarifying points on the levy review process conducted within the cherry industry. This additional information is contained herein.

The vote conducted by the Tasmanian Electoral Commission saw a return vote of approximately 16%. The Australian cherry industry has a large base of growers, however production volumes is very skewed to a small number of grower operations. The companies Cherry Hill Orchards, Wandin Valley Farms, Koala Country, Reid Fruits, Hansen Orchards, Torrens Valley Orchards, Hallmark Orchards and EB Batinich make up approximately 70% (or

greater – depending on the year) of Australian cherry production. Discussions with these operations have confirmed that ALL of these operations registered a vote in the levy count. While all levy payers in the cherry industry were not individually asked if they voted in the levy vote, the confirmation of these entities registering a vote means that at least 70% of production of the industry voted in the levy voting process.

Additionally, the penetration to the industry during the levy vote process was extremely high. The Australian cherry industry is not a large industry and, comparative to other industries, the Australian cherry industry Peak Body maintains excellent communication with all growers individually.

Cherry Growers Australia is a body which has four members being the state cherry industry representative bodies of NSW, Victoria, Tasmania and South Australia.

During the levy review process, each state body was engaged and presentations made to the boards of each state body. Including the Peak Industry Body Board (Cherry Growers Australia), this saw direct grower engagement of 40 producers – 10% of industry. Each state entity maintains its own membership database as does Cherry Growers Australia. These databases include phone, email and mailing addresses. Growers were invited to attend levy workshops as well as levy workshops being held across other industry related events.

The levy workshops were not just run as standalone events, but in conjunction with annual cherry industry events such as the AGMs of Tasmania (Fruit Growers Tasmania), Victoria (Victorian Cherry Association), NSW (Cherry Growers Association of New South Wales) and South Australia (Cherries South Australia) and the Victorian cherry conference, Fruit Growers Tasmania Conference and Cherry Export Working Group events during 2017 and 2018.

Also, a levy update, review and introduction to the review was held at the Cherry Growers Australia Export Registration Workshops which are held annually (2 in NSW, 1 in Victoria, 2 in Tasmania and 1 in South Australia). The Cherry Export Registration Workshops have included a levy presentation every year since 2016 and these still continue today.

The results of the levy vote were presented at the Cherry Growers Australia AGM 2018, the Fruit Growers Tasmania Conference 2018 and were listed on the Cherry Growers Australia website from March 2018-June 2018. The Cherry Growers Australia is the principle electronic touch point for the Australian cherry industry and is regularly accessed by levy payers as is the portal for Export Registrations, the Cherry Export Manual, export MRL details and the repository for cherry correspondence.

In response to how the Levy Proposal Checklist has been met, the following responses are offered;

Is there a significant market failure for industry?

The cherry industry has been in a state of domestic oversupply for a number of years. A critical market failure resulting in widespread financial losses for industry members was experienced in 2010. This was followed in another, more severe, market failure in 2012.

Foreign export markets have long been the focus of the Australian cherry industry and for the last 10 years has been the principal R&D focus of the cherry levy fund. The R&D requirements to support the market aspirations of the cherry industry have been requiring an ever-increasing amount of funds from the cherry R&D fund. So much so that the cherry industry has regularly run a deficit. In fact, for the last 2 years the cherry industry has not been able to approve new projects from the R&D fund as it has been, after deductions of previously approved projects, running a financial deficit.

Over this same period, the cherry levy marketing fund has been running a surplus of funds as the cherry industry wished to keep marketing funds available for when new market access was achieved and a new market development strategy could be implemented.

The proposal was made to increase the R&D levy and reduce the marketing levy to ensure the cherry levy was allocated where the cherry industry needed it to be.

Horticulture Innovation Australia have been updated every step of the levy review process and have supported the change in levy proportions (R&D vs market) due to the deficit in the cherry levy R&D fund and the surplus in the cherry levy marketing fund.

The future of the cherry industry remains tied inextricably to market access. Without market access, the cherry industry will flounder in a domestic market that is currently oversupplied in peak periods during harvest. The requests for data to underpin phytosanitary market access protocols from the Australian Department of Agriculture are significant and cost a lot of money to procure. The change in the levy proportion seeks to unlock the funds the cherry industry so desperately needs to keep their market access focus moving forward.

Does the proposed levy have majority support from the potential levy payers?

The levy review saw consultation with industry over a 2 year period, encompassing all states and sought to garner direct consultation and input from all levy payers within Australia. The levy vote has demonstrated clear support from the majority of respondents and can demonstrate the majority of production (demonstrated by all major producers voting in the ballot) supporting the levy change. With all major producers voting in the ballot supporting the change, this has also demonstrated that over 70% of cherry production supports the change. Grower numbers who have been consulted through the stand-alone levy workshops as well as the industry events where levy workshops and presentations were held has resulted in an estimated grower penetration of upwards of 90%. Also, through contact advising of the grower workshops through cherry grower state bodies and the Peak Industry Body, contact advising of workshops, events and the vote, Cherry Growers Australia is confident that all growers have been provided the opportunity to participate in consultation and to vote in the ballot.

Additionally, after the vote, the attached confirmation of the levy vote and an invitation to submit any subsequent comment or feedback was given to industry directly via email correspondence and an invitation to comment being placed on CGA's website. Only 4 responses were provided with no comments disputing or questioning the result.

Has there been a reasonable attempt to inform all potential levy payers of the proposal and allow them to comment?

The levy review process was conducted over 2 years and saw two votes taken of industry seeking to support the levy change. The consultation period included multiple engagements with growers seeking advice and collating advice into final levy proposals that were put to the levy payers for final feedback prior to voting.

All avenues of contact were exhausted in contacting levy payers with contact made through the state organisations and Peak Industry body as well as growers being reviewed as per the LRS levy payer list.

The refining of the levy proposal that was finally put to growers after years of consultation and a vote that was not supported by the former agriculture minister. This refute of industry's wishes saw the industry have to reevaluate its priorities.

The initial structure proposed was sought to support the cherry industry market access agenda by funding the Peak Industry body to carry out a specific program focused on export market access and development. While this proposal was ultimately not supported by the minister, the subsequent proposal saw the cherry industry retain the same desire to focus on export market development by allocating increased funds to R&D rather than marketing.

The support of this program has been widely supported due to the industry overwhelmingly supporting the focus on export market development and research and development. While all funds in the cherry levy R&D fund are not being allocated to market access research, proportionately allocating more funds the cherry R&D will allow research outside of market access to be continued while these projects are pursued. Without reallocating funds to the R&D fund, it would likely transpire that some other projects – identified as a priority to industry – would ultimately not be pursued.

Has the initiator of the levy proposal provided an analysis of any arguments opposing a levy?

There is no opposition to having a cherry levy of some description at 7c per kilogram sold. There was a proposal to increase the levy beyond 7c in during early discussions of the levy review, but this failed to garner any significant support in any of the latter workshop events. There remains support for a 7c levy and it has only been the allocation of the 7c that has been a discussion point. All proposals received from industry have been based on the payment of a 7c per kg levy. This includes a proposal received, that failed to garner widespread support, that suggested moving to a levy where a proportion of the levy was collected by Cherry Growers Australia with growers contributing this on a voluntary basis. This saw the overall 'levy' remain at 7c but with a proportion collected by CGA and the remainder collected by LRS.

The majority of responses after the initial levy vote supporting a levy contribution directly to CGA sought a reduction of the marketing levy with the R&D levy to be increased. At the final meeting to discuss the proposals to be placed on the ballot, it was a unanimous decision by all parties that the ballot should include the existing makeup of the levy and the change to a 1c marketing levy and a 5.7c R&D levy. Attendees at this event were state-based levy payer representatives elected by the levy payers of their state to represent their interests at the

levy consultation meeting. All respondents at this event acknowledged their preference for the 1c marketing and 5.7c R&D levy – recognizing that this was the majority view of the state they were representing. No dissenting views were noted as to the ballot being finalized on these two options and the final voting ballot was passed unanimously by the state members noting the majority of the levy payers they were representing supported the new proportioned structure.

Is there an estimate of how much levy would be raised, a clear plan of how it would be utilised and how it would benefit levy payers?

In all levy workshops and levy consultative events, a document detailing the amount of the levy that was to be raised was provided. Samples of these documents have been provided. It has always been the case that growers have been made fully aware of how much levy would be raised by altering the proportion of levy allocated to R&D and marketing.

Comments have been noted (and raised with the industry) by Hort Innovation that the levy at 4c per kilogram has been inadequate to meet the R&D requirements of industry and this would likely need to be raised. Advice on Cherry Industry Levy Fund investments is given by the Cherry Industry Strategic Industry Advisory Panel – a panel of levy payers. This group also acknowledges that they have had insufficient funds in the R&D fund each year since the group's inception to fund all the cherry industry's R&D requirements in any given year. This has been especially prevalent in the 2016/2017 and 2017/2018 financial years where no additional projects have been able to be funded due to a deficit in R&D funds as a result of a lower than forecast levied crop in 2016/2017.

Conversely, the cherry levy marketing fund currently has approximately \$800k available in the fund after \$300k spent in the last season. This fund has sufficient funds in it to conduct the cherry levy marketing requirements for a number of years into the future. Projections based on current cherry marketing fund use project there is sufficient funds to run the cherry levy marketing program for a number of years – even without the contribution of the 1c levy that will remain after the proposed levy change takes place.

The principal benefit to the cherry industry by the proposed proportion change will be the cherry levy being correctly aligned with the needs of the cherry industry today. The needs of the cherry industry is to have an increased amount of R&D funds available annually. Currently, the R&D fund is inadequately funded to cover the market access research needs to the cherry industry while still continuing the communication, extension and production R&D that is required to support the growth of an industry. Currently the industry SIAP has to prioritize projects such that a number of key industry projects have remained “approved in principle” for a number of years but have not have the funds to move to contracting stage. Hort Innovation have confirmed that constraints on the cherry industry R&D levy fund have prevented the cherry industry from not only carrying out a number of projects it has supported for cherry industry benefit, but also a number of cross industry projects that have been supported “in principle” but not financially because inadequate funds have been available to facilitate participation.

Funds received by the R&D fund under the new allocations would be used to fund a number of 'on hold' projects that await funding while allowing review of the status of other strategic projects that have not progressed to approval stage as yet due to funding constraints.

Is there majority support on the levy imposition and collection mechanism, or demonstration that the mechanism is equitable?

Currently the cherry levy has been implemented for decades. The levy, at 7c/kg does not present a meaningful imposition on growers when calculated as a percentage of the average sale price for Australian cherries per kg. Currently, the levy represents approximately 0.64% of the average sale price for Australian cherries.

The collection point mechanism for the Australian cherry grower are varied and provide growers options to pay their levies without disadvantage to any other grower. Collection point can be reseller/point of sale or agent/exporter as well as being the grower themselves.

This allows growers who sell through an agent or reseller to have them collect and remit the levy on their behalf or they can 'opt out' of this arrangement if they prefer to remit the levy themselves.

These options allow growers to have their agent/exporter/retailer/reseller calculate and remit the levy on their behalf so they do not have to calculate it themselves at the end of the season. Alternatively, they can advise this third party to not deduct the levy in favor of paying it themselves at the conclusion of the season.

It also allows for a hybrid model between the two if a grower has direct sales themselves they need to ensure are levied while letting a third party deduct the levy on any sales they make themselves.

Audits are conducted by LRS annually on both third parties sellers and the grower levy payers to ensure compliance with levy conditions and payment conditions to ensure an equitable levy collection environment across all levy payers while preventing non-compliance.

No changes are proposed to current method of collection.

Is the levy imposition equitable between levy payers?

The levy represents a low percentage of sale price, based on the average domestic sale price. While some growers may achieve a higher sale price and some lower, the levy does not present a barrier to trade such that a grower could not survive as a result of the requirement to pay the levy.

Additionally, there has been no feedback received by industry that has suggested anything other than a desire to continue to have the levy in place at 7c in some form.

Larger growers may have a economies of scale that smaller grower do not have, however the percentage of the total levy that larger growers pay and their total payments are much higher.

As such, it could be that the largest growers in the industry disproportionately support growers smaller than them in volume in that they pay a higher levy that supports more activities than a smaller grower. The activities of the levy in all cases benefit all industry rather than just 'the larger growers.'

There is yet to be a circumstance in the cherry industry where large growers or small growers have banded together against the other and, perhaps due to the small size of the industry, historically all producers have banded together to support the growth of industry.

As the levy is such a small percentage of the average sale price, it is not considered to provide a meaningful disproportionate effect on one grower as opposed to another.

Is the levy imposition related to the inputs, outputs or value of production of the industry?
There is no meaningful imposition made by the levy regarding to input, output, production of the industry or the viability of the industry in the future.

In fact, the argument could be made that the reverse is true. That is, if the changes to the R&D levy do not go ahead it is extremely unlikely that the cherry R&D fund will be able to maintain the level of investment required to meet the even the basic ongoing research needs of the cherry industry. That is, industry needs across market access, market development, extension, communication, training and domestic production improvement would not be met. This is evidenced by the inability of the R&D fund to undertake all projects highlighted as a priority for funding by the SIAP.

Is the levy collection system efficient and practical, and does it impose minimal 'red tape' for business?

Levy collection points, as previously described, allows for multiple collection points across the supply chain. This can see absolutely no 'red tape' for business (in the event an agent or reseller collects the remits the levy) or minimal red tape (in the event the levy payer themselves remits their own levy at season end). The cherry harvest window is narrow and cherries are only harvest – regardless of region – for a short period across the Australian summer. Regardless of location, it is likely that a levy payer would only need to complete one levy payment to LRS at the close of their season. This is an established practice and does not impose significant impost on the levy payer.

As for any agents/resellers/exporters/retailers submitting a levy on a growers behalf, it is likely that this organization would already be doing the same for a number of growers within the cherry industry or from another horticultural industry. Again, this practice has been in place for decades and does not present a move to introduce more or less impost into the industry and is not highlighted as an issue of contention as it relates to the cherry levy.

Has the body that will manage levy monies been consulted and is that body accountable to levy payers and Government?

Hort Innovation manages all statutory horticultural levies for Australian horticulture. Hort Innovation has managed the cherry levy since it replaced the prior horticulture RDC – Horticulture Australia Limited.

Hort Innovation is owned by the horticultural levy payers of Australia and was structured and implemented by the Australian government.

While levy payer owned, Hort Innovation reports to and is accountable to the Australian government.

Does the industry have a plan to review the levy against the Levy Principles?

The review of the Australian cherry levy has been undertaken in direct consideration of the Levy Principles and as a requirement of the levy principles necessitating the levy review.

The Australian cherry industry considers that the Australian Cherry Levy review has met all criteria of the levy principles and requests review of and approval of the levy changes by the Australian Federal Government Agriculture Minister.

Finally, the submission made by the cherry industry to alter the levy also sought to amend the EPPRD levy. This notes that since the levy vote has been completed, Cherry Growers Australia has received final estimations on pest responses for Varroa Mite and Brown Marmorated Stink Bug, which will require the EPPR levy to be activated. Initial estimations of the pest responses are as follows:

- Varroa - \$104,520
- BMSB (Glendenning) \$3,225
- BMSB (Jandakot) \$2,670

Future tonnage of the Australian cherry industry is expected to be approximately 15,000t annually. In order for the pest responses to be repaid within a 3 year period, request the EPPR be activated at .7c annually.

With the EPPR activated, the new levy structure is proposed as follows:

- 5.00 (Cents /Kilogram) for Research & Development that is matched \$ for \$ by the Australian Government;
- 0.30 (Cent /Kilogram) for Plant Health Australia Levy, that is not matched by the Australian Government;
- 1.00 (Cent /Kilogram) for Marketing & Promotional activities, that is not matched by the Australian Government;
- 0.70 (Cent /Kilogram) for the Emergency Plant Pest Response Deed levy that will be matched or otherwise as agreed to under regulations and agreements from the EPPRD;

This amendment would be undertaken to ensure that costs are met for the cost sharing arrangements above. At the time these cost sharing arrangements are concluded, the Australian cherry industry would seek to reduce the EPPRD levy to zero with the .7c EPPRD levy allocated back to the cherry R&D levy as per the last cherry levy vote.

As advised by Levies Revenue Service, the attached notice of intention to lodge this change was uploaded on the cherry growers Australia website in May 2018 and removed in September 2018.

This was noted on the 'Latest News' section of the website on the initial screen of the website.

No objections were noted.

The EPPRD levy has also been discussed at the CGA board, Cherry Export Working Group, all State Entities and at levy updates provided by Cherry Growers Australia at the AGM in 2018, Export Workshop in 2018 and the SIAP in 2018.

On behalf of Cherry Growers Australia, all growers have been advised of the proposed changes to the EPPR levy, that the request for the changes have been made to yourself, as Minister for Agriculture and Water Resources, and that there will be an objection period. This communication details the start date (the date of the communication) of the 14th of May 2018 and with an estimated conclusion date of 29th of June 2018. The notice was actually held on the CGA website until September 2018.

I have attached for your information:

- A full copy of final discussion paper emailed out to all levy payers via the CGA database (293) and levy database (323) and hard copy mailed out to CGA mail-out database (560) in August 2017;
- Previous correspondence provided to the Minister for Agriculture in November 2017 and May 2018;
- Summary of activities undertaken by industry to ensure compliance with levy principles;
- The summary report from Levy Workshops in 2017 sent to the CGA Board prior to the Levy Vote;
- A copy of the Levy Vote advice sent to all Levy Payers with the Levy Ballot Pack; and
- Copy of the Levy Ballot Pack Letter and Ballot paper as prepared by and sent to levy payers by the Tasmanian Electoral Commission.

I look forward to discussing our recommendation made to you for the changes in the Australian Cherry Levy and trust the changes can be implemented as soon as possible. As noted, the cherry industry R&D fund is in need of financial support and these changes will see the current status of the fund greatly improved.

If you need any further information please call me on 0438 059 464 or email me on president@cherrygrowers.org.au

Yours faithfully,

Tom Eastlake
President
Cherry Growers Australia