



Berries Australia

Proposal to amend the Nursery Products levy

October 2025

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About Berries Australia

Berries Australia was established in November 2018 as a joint venture between the Australian Blueberry Growers' Association Inc. (ABGA), Raspberries and Blackberries Australia Inc. (RABA) and Strawberries Australia Inc. (SAI) to represent the interests of the Australian berry industry as a whole. RABA is the prescribed industry body for the rubus industry and the ABGA is the relevant entity for the blueberry industry.

The Nursery Products Levy¹ and the berry sector

The nursery products levy was raised in 1989 and was one of the earliest statutory levies raised under the current system. The purpose of the levy was to support the nursery industry to raise R&D funds for the advancement of the industry. The original levy proposal was instigated by the Nursery Industry Association Australia (now Greenlife Industry Australia). The levy is imposed on the wholesale cost of containers which includes pots, bags, cell trays, or other containers used in the production of nursery products.

At the time the levy was raised, the use of pots and bags was limited to the propagation component of horticultural production. This collection methodology had the benefit of being relatively straightforward in what is an inherently complex sector producing thousands of varieties of plants. Production systems have changed dramatically in the last 35 years and pots and bags are no longer the exclusive preserve of the nursery sector. This has created the unintended consequence of capturing containers used for rubus, blueberry and other commodities commercially harvested as food crops.

The current nursery products levy applies on the wholesale value of containers. A container means any container that is designed for use in the production or preparation of a nursery product for sale or for use in the production of other goods, and are to be the immediate container of the nursery product. Nursery products are defined as trees, shrubs, plants, seeds, bulbs, corms, tubers, propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers and foliage. The nursery products levy currently raises in the order of \$1.7 million for research and development and \$1.2 million per year for marketing².

On behalf of the non-propagation industries who utilise containers, we are seeking an amendment to the current definition of nursery products to clarify that the levy should only be applied to containers used for propagation. A definition more in line with the original policy intent and focus of this submission is as follows:

A nursery product means a potted plant in a growing medium in a container. Potted plants classified as nursery products are trees, shrubs, plants (including fruit, vegetable and nut plants), seeds, bulbs, corms,

¹ The levy seems to be variously named the nursery container levy and the nursery products levy even by government <https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/rates/nursery-products>

² <https://www.horticulture.com.au/globalassets/hort-innovation/levy-fund-financial-and-management-documents/annual-investment-plan-pdfs-202324/hort-innovation-aip-nursery-2023-24.pdf>

tubers, propagating material and plant tissue cultures, grown commercially for ornamental, landscape, retail, fruit, vegetable, nut, revegetation, fibre and/or cut flower and foliage purposes.

A container means any container that is designed for use in the production and/or preparation of a nursery product for sale or for use in the production of other nursery products, and which is to be the immediate container of the nursery product.

Seedlings grown in containers for forestry operations are not classified as nursery products.

Plants grown in containers that are commercially farmed and harvested as food crops are not classified as nursery products.

The berry industry has seen remarkable growth over the last few years with a 458% increase in volume 306% increase in value between 2012/13 and 2020/21 for rubus alone. Much of this growth has been a consequence of new genetics and new planting methods. Almost all commercial production of rubus now uses hydroponic systems whereby the grower purchases planting stock in a seedling tray³ and then replants into a pot or a bag filled with artificial growing media. The hydroponic system enables year-round production of rubus and is a highly technical growing process. This system is vastly different from the tiny volumes produced from in-ground plantings at the time of the nursery products levy introduction.

Some blueberry production also uses hydroponic systems as it is the optimal approach in certain climates and with certain varieties. Whilst the rate of growth for blueberry production has slowed in recent years the industry is a long way from the niche product of the 1980s and 1990s. Currently valued at \$1.4 billion/annum, the berry industry now represents the single largest fresh produce category in Australian supermarkets.

In practice what this means in terms of berry production is that a propagator will pay a nursery products levy on a seedling tray (which they should) and the seedlings will be then sold to the berry grower. In most cases the nursery products levy cost paid by the propagator will be included in the cost of the seedling. For some commodities, including rubus and blueberries, the seedlings are then planted in a pot or bag which is paid for by the grower and the grower currently is obliged to pay the nursery products levy on that new container. The same grower will then pay a berry levy on the fruit produced from that seedling. This effectively means growers are paying three levies on the same final product (2 nursery product levies and one fruit levy) and they are unable to pass such costs through the supply chain as they are price takers.

Growers/commodities who use modern practices like artificial growing media are effectively penalized. Not only is the same plant levied twice when it transitions from tray to pot, (nursery products levy), the berry grower is also levied again (berry levy) when they sell the fruit produced from that plant.

It should also be noted that not all pot wholesalers are collecting the nursery products levy, on purchases made by fruit growers, as there is a widespread perception that pots used for growing fruit are not captured i.e., exempt. While the last thing we want is to increase the number of commodity growers paying the nursery products levy, it does highlight an inequitable and uneven imposition on some growers and a lack of clarity around the nursery products levy.

We are aware that some other commodities such as ginger utilise containers although the levy income from this would be minimal. It is important to address this issue now, as more and more commodities will move to container production as protected cropping and hydroponics becomes more prevalent.

³ Subject to the nursery products levy which is in most cases passed onto the fruit grower as part of the seedling cost.

Case for change

As the representative body for the rubus and blueberry producers of Australia, we are requesting an amendment of the nursery products levy to remove the obligation for fruit growers to pay this levy. It should be noted that Greenlife Industry Australia supports this proposal as do Hort Innovation and Plant Health Australia. It is well acknowledged that fruit growers were never intended to pay the nursery products levy and have never been involved in any consultation or engagement as to the expenditure of the nursery products levy. It should also be noted that Forestry products are not captured by the nursery products levy. Whilst we are seeking an amendment that will encompass all commodity production inadvertently captured by this levy, we are using berries as the clearest example and an appropriate proxy when demonstrating the impact of this amendment.

The rubus industry is worth **\$205million/annum**. The rubus industry undertook a full levy amendment process as required under the levy legislation and amended their levy. From 1 October 2023 rubus growers are subject to a statutory research and development levy of 2c/kg and a new biosecurity levy of 2c/kg. The industry voted to remove the marketing levy as it was not delivering for the sector which makes the contribution to the nursery marketing fund even more contentious. Prior to the levy amendment, the industry paid 12c/kg levy (10c R&D, 2c Marketing) and the forecast 2023/24 closing balance is \$3.6 million. Rubus production has extremely high set up costs and the establishment of new operations is around \$400,000 per ha. As supply has increased to meet demand growers are now being paid less than the cost of production at certain times of year. The export value of the industry is negligible and due to the highly perishable nature of the product a viable export market is many years away.

The rubus industry is highly concentrated and most growers grow licensed varieties and market the product through the license owner. Whilst we estimate there are around 65 active growers there are really only five consumer facing brands: Driscolls, Perfection, Berryworld/Pinata, Smart Berries and Mountain Blue which account for nearly 100 per cent of all production

The blueberry industry is worth **\$505 million/annum** and currently pays a voluntary levy based on tonnage to the ABGA with the amount decided annually by the committee. The industry currently contributes 4.75c/kg to a collective industry fund (CIF) mechanism which is paid to Hort Innovation. There are approximately 300 active growers. Blueberry supply and demand have reached relative equilibrium with growers being paid less than the cost of production at certain times of year. The blueberry industry has invested enormously in research and development for market access using both matched and unmatched funds. The industry has yet to see a return on investment for those funds with respect to the opening of new protocol markets.

Whilst the blueberry industry is much larger and not quite as concentrated as the rubus industry, the use of nursery containers is less common and largely confined to larger operators growing for the proprietary brands listed above. It should also be noted that blueberry plants remain in their containers for up to six years as opposed to the annual turnover for rubus.

Through engagement with the main brand owners, we have been able to estimate that the annual contribution to the nursery products levy from berry growers is a maximum of \$177,750 per year. It should be noted that this amount varies year to year as containers, particularly pots, are recycled. Whilst the contribution of other fruit producing commodities is relatively minimal at this point, this has the potential to increase as hydroponic cropping methods are adopted so it is imperative that this amendment be made swiftly.

A more detailed breakdown of how these figures were calculated is provided in Appendix A which is confidential due to commercial in confidence requirements.

In establishing the case for change the following should be noted:

- plants grown in containers that are commercially farmed and harvested as food crops were not intended to be captured by the nursery products levy when it was conceived.⁴
- Fruit growers were not consulted at the time of its introduction
- Fruit growers have never been involved in any discussions regarding the investment of the levy over the last 35 years
- Fruit growers have never been direct beneficiaries of any of the Research and Development funded through the nursery products levy above and beyond that which has also been derived by other fruit growing commodities.
- Fruit grower contribute to the marketing of a product they don't sell. Propagation materials are actually one of their core input costs which means they are effectively marketing to themselves as the consumer of those materials.
- The inclusion of fruit growers into the nursery products levy is the result of changed growing practices not any specific desire to capture these growers
- Currently rubus growers contribute to the statutory rubus levy which has recently been significantly reduced but the current balance held by Hort Innovation is \$4 million, highlighting that the rubus industry has already contributed significantly above their R&D needs for many years.
- The blueberry growers do not have a statutory levy in place and have never agreed to any statutory levy let alone one from which they derive no benefit.

Fundamentally the capture of growers who produce fruit for sale is an unintended consequence of changed growing practices. Whilst we accept the loss of up to \$98,000 in unmatched R&D funds, \$9000 in PHA contributions and \$71,000 of marketing funds is not inconsequential to the nursery products levy, we also consider that it is unreasonable to require fruit growers to contribute to a levy from which they derive no benefit. We are appreciative of the support and understanding of the Greenlife Industry Australia and undertake to make no claim on nursery products levy funds derived from the berry sector in the past, provided this amendment is made.

Response to Levy Principles

1. The proposed levy must relate to a function for which there is a market failure.

Market

There is no market failure in relation to fruit producers using pots and bags for the production of fruit rather it is a failure to adequately define the imposition point to exclude unintended fruit growing commodities. In the context of levies, market failure is generally identified as occurring when producers are unable to invest in research and development or marketing at sufficient scale to drive industry growth and a collective approach is needed, along with government support, to realise research and development outcomes. The levying of pots and bag sales is the mechanism to collect funds to support the R&D and marketing needs of the nursery industry and not intrinsically related to any properties of the pots and bags themselves. Fruit production for sale is a completely different industry and is not under normal circumstances considered to be captured by the term "nursery" production.⁵ In the case where the fruit, not the plant, is the saleable product there is clearly no market failure as the fruit itself is also levied and those levy funds are invested in the Research and Development needs of the blueberry and rubus industries. It can be inferred that the overwhelming support for reducing the rubus R&D levy and the removal of the marketing levy through the full levy amendment process undertaken last year by RABA demonstrates the berry growers consider there is no market failure in relation to these activities. The blueberry industry invests heavily in marketing through their voluntary levy

⁴ Pers comm Jan Davis former CEO of NGIA now Greenlife Australia.

⁵ One cannot imagine chicken meat producers being subject to the egg levy.

also demonstrating there is no market failure and no justification for contributing funds to the marketing of another industry.

A request for a levy must be supported by industry bodies representing, wherever possible, all existing and/or potential levy payers, the relevant levy beneficiaries and other interested parties.

As the nursery products levy was raised more than 30 years ago when the Australian berry industry was tiny and did not use hydroponic systems, berry growers were not consulted. We understand there was no intent in the original levy to capture growers using fruit for sale and the reference to fruit in the definition of nursery products was directed to the production of fruit trees for sale. It was impossible to foresee that fruit growers would purchase pots for replanting propagated plants and therefore the capture of berry production and other fruit growing commodities by the nursery products levy was never supported by this group of levy payers.

Berries Australia surveyed the majority of rubus production who all support the removal of their requirement to pay the nursery products levy as they already have been over levied in proportion to the size of the industry and have contributed a disproportionate amount to their R&D fund. The issue has been raised with all of the hydroponic blueberry producers, and they all support the removal of the nursery products levy imposition.

2. The initiator of a levy proposal shall provide an assessment of the extent, the nature and source of any opposition to the levy, and shall provide an analysis of the opposing argument and reasons why the levy should be imposed despite the argument raised against the levy.

The berry and other fruit growers captured by the nursery products levy have never been consulted about their inclusion in this levy and they have no opinion of the validity of the levy as it affects the nursery sector. If the nursery products levy was raised today based on the same definition, the rubus and blueberry industry represented by RABA and ABGA would raise strenuous objections about their inclusion in the levy.

The majority (as captured in our consultation) of the rubus and blueberry industry supports the removal of the requirement for berry producers to pay the nursery products levy.

We understand that Greenlife Industry Australia will notify other nursery levy payers about this proposal through their industry communications, and we will work with them throughout this process and a reasonable notification period.

3. The initiator is responsible to provide, as follows: **a.** an estimate of the amount of levy to be raised to fulfil its proposed function; **b.** a clear plan of how the levy will be utilised, including an assessment of how the plan will benefit the levy payers in an equitable manner; **c.** demonstrated acceptance of the plan by levy payers in a manner consistent with levy principle 2.

The proposed function of the nursery products levy is to support the nursery industry whose primary business is the propagation and sale of plants.

- a) The capture of the berry and other fruit growing producers means the amount raised exceeds the proposed purpose of the original levy.
- b) The current nursery products levy does not benefit berry and other fruit growers in any way above and beyond the benefit obtained by other fruit producers who use propagation material and grow to harvest the produce. It is completely inequitable that a sub-set of the nursery product levy payers derive no benefit from the levy and have no involvement in how those funds are invested.
- c) The berry industry has no opportunity to contribute to any planning around the investment of the nursery products levy

4. The initiator must be able to demonstrate that there is agreement by a majority on the levy imposition/collection mechanism or that, despite objections, the proposed mechanism is equitable under the circumstances.

As outlined above the proposed mechanism is completely inequitable to fruit growers who derive no benefit from the nursery products levy. This is a function of the levy being put in place more than 30 years ago before the switch to hydroponics for berry fruit production.

5. The levy imposition must be equitable between levy payers.

The levy imposition is not equitable as fruit producers captured by the nursery products levy are also levied on the final saleable product, which is not the case for most nursery products levy payers who are only levied on the input cost of containers. Essentially fruit producers are levied twice for the same product if they use pots and bags.

The imposition of the levy must be related to the inputs, outputs or units of value of production of the industry or some other equitable arrangements linked to the function causing the market failure.

The use of pots and containers for berry production is a relatively recent phenomenon and came after the development of the nursery products levy. The market failure relating to funding of berry research and development is addressed through the rubus levy and through the blueberry contribution to the CIF. Additionally, only some blueberry producers are subject to the nursery products levy as many of them use in-ground production methods. The nursery products levy is potentially creating a distortion in the berry sector by acting as a disincentive to the uptake of best practice production methods.

6. The levy collection system must be efficient and practical. It must impose the lowest possible 'red tape' impact on business and must satisfy transparency and accountability requirements.

The collection system is inefficient as it captures producers who are not nursery producers and do not benefit from the nursery products levy.. Our interest is ensuring that fruit growers who grow fruit for sale are not captured by this collection method.

7. Unless new structures are proposed, the organisation/s that will manage expenditure of levy monies must be consulted prior to introduction of the levy.

Both Horticulture Innovation and Greenlife Industry Australia support amending the levy to ensure producers growing fruit for sale are not captured by the nursery products levy.

8. The body managing expenditure of levy monies must be accountable to levy payers and to the Commonwealth.

As the inclusion of berry and other fruit producers in the nursery products levy was not the intent of the levy when it was raised and has only come about as production systems have changed over the last decade, berry producers who pay the pot levy have never been consulted by Hort Innovation and Greenlife Industry Australia as to the expenditure of that levy. The berry growers have indicated their willingness to forego any rights in relation to the expenditure of the levy funds collected up until now, on the proviso that there will be no further obligation to pay the nursery products levy. If berry growers continue to pay this levy, then the industry will seek to gain research and investment activity commensurate with their contribution over the last decade.

9. After a specified time period, levies must be reviewed against these principles in the manner determined by the government and the industry when the levy was first imposed.

As outlined above the inadvertent imposition of the nursery products levy on fruit growers was not the intent of the levy, does not meet the levy principles and is an unintended consequence of changed growing techniques. We request that government take this opportunity to correct this anomaly.

Amendments to existing levies

10. The proposed change must be supported by industry bodies or by levy payers or by the government in the public interest. The initiator of the change must establish the case for change and where an increase is involved, must estimate the additional amount which would be raised. The initiator must indicate how the increase would be spent and must demonstrate the benefit of this expenditure for levy payers.

Berries Australia and Greenlife Industry Australia support this change to correct the inadvertent capture of berry and other fruit growers in the nursery products levy as outlined in the case for change above. We appreciate that it is unusual for an entity outside of the Peak Industry Body to request a change but consider that this is more of a correction to prevent inadvertent inclusions rather than a change in the intent or collection of the levy per se.

This submission was prepared by Rachel Mackenzie Executive Director of Berries Australia. For further information please call 0408 796 199 or email rachelmackenzie@berries.net.au