



Horticultural Levy (Apple and Pear) Regulations

Statutory Rules 1988 No. 189 as amended

made under the

*Horticultural Levy Act 1987 and the Horticultural Levy
Collection Act 1987*

This compilation was prepared on 9 August 2002
taking into account amendments up to SR 1999 No. 304

[Note: These regulations were repealed by SR 1999 No. 304]

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1 Citation [see Note 1]

These Regulations may be cited as the Horticultural Levy (Apple and Pear) Regulations.

2 Commencement [see Note 1]

These Regulations commence on the date of commencement of the Levy Act.

3 Interpretation

(1) In these Regulations, unless the contrary intention appears:

apple means fruit of any species of the genus *Malus*.

apple juice includes:

- (a) cider; or
- (b) any beverage distilled from apples.

authorised agent means a person appointed under regulation 6 of the Horticultural Levy Collection Regulations.

box, in relation to apples or pears, means a container of a kind:

- (a) ordinarily used in the Australian horticultural industry for packing apples or pears; and
- (b) ordinarily known in that industry as a bushel box or 30 litre box.

fruit juice includes:

- (a) apple juice; or
- (b) pear juice.

juicing apples means apples:

- (a) sold by the producer to a first purchaser, or through a selling agent, for use in the production in Australia of fruit juice; or
- (b) used by the producer in the production in Australia of fruit juice.

juicing pears means pears:

- (a) sold by the producer to a first purchaser, or through a selling agent, for use in the production in Australia of fruit juice; or
- (b) used by the producer in the production in Australia of fruit juice.

nashi means fruit of the species *Pyrus pyrifolia*.

pear means fruit of any species of the genus *Pyrus*.

pear juice includes:

- (a) perry; or
- (b) any beverage distilled from pears.

prescribed class, in relation to apples or pears, means one of the classes of horticultural products prescribed by regulation 7.

prescribed first purchaser means a person:

- (a) who, because of a business carried on by the person, is a first purchaser of leviable horticultural products; and
- (b) whose business referred to in paragraph (a) is not wholly or substantially a business of selling or processing horticultural products.

processing apples means apples:

- (a) sold by the producer to a first purchaser, or through a selling agent, for use in the production in Australia of a processed product other than fruit juice; or
- (b) used by the producer in the production in Australia of a processed product other than fruit juice.

processing pears means pears:

- (a) sold by the producer to a first purchaser, or through a selling agent, for use in the production in Australia of a processed product other than fruit juice; or
- (b) used by the producer in the production in Australia of a processed product other than fruit juice.

retail sale, in relation to a sale of a leviable horticultural product by a producer, means a sale by the producer of the product other than a sale to a first purchaser or through a selling agent.

the Collection Act means the *Horticultural Levy Collection Act 1987*.

the Levy Act means the *Horticultural Levy Act 1987*.

tray, in relation to nashi, means a container of a kind:

- (a) ordinarily used in the Australian horticultural industry for packing nashi; and
 - (b) ordinarily known in that industry as a single layer tray.
- (2) For the purposes of the application of these Regulations to apples and pears not packed in boxes, a reference to a box of apples or pears is a reference to:
- (a) 18 kilograms of apples or pears; or
 - (b) if the apples or pears are of a variety in respect of which another weight is prescribed for the purposes of this paragraph — that other weight of apples or pears.
- (3) For the purposes of the application of these Regulations to nashi not packed in trays, a reference to a tray of nashi is a reference to 4 kilograms of nashi.

4 Rates of levy

In relation to a class of leviable horticultural products specified in an item in the Schedule:

- (a) the rate of levy for the purposes of section 8 of the Levy Act is 90% of the rate specified in that item; and
- (b) the rate of levy for the purposes of section 9 of the Levy Act is 10% of the rate specified in that item.

5 Exemption from levy

For the purposes of paragraph 13 (2) (b) of the Levy Act, the following subclasses of the prescribed classes of leviable horticultural products are exempt from levy:

- (a) apples or pears:
 - (i) sold in a calendar year by the producer by retail sale; or
 - (ii) used in a calendar year by the producer in the production of fruit juice or any other processed product;

if the total of the quantities of apples and of pears so sold and so used by that producer in that year does not exceed 500 boxes;

- (b) apples or pears purchased in a calendar year by a prescribed first purchaser if the total of the quantities of apples and of pears so purchased by that prescribed first purchaser does not exceed 500 boxes;
- (c) apples, other than juicing apples or processing apples, sold for stockfood;
- (d) pears, other than juicing pears or processing pears, sold for stockfood;
- (e) processing pears on which levy is, or becomes, payable under the *Dried Fruits Levy Act 1971*;
- (f) processing pears or juicing pears used in the production of canned fruit.

6 Eligible industry bodies

For the purposes of subsections 14 (6) and (7) of the Levy Act, the eligible industry body for the classes of leviable horticultural products specified in Column 2 in the Schedule is:

- (a) in respect of nashi, juicing nashi and processing nashi — the Australian Nashi Growers' Association; and
- (b) in respect of all other classes — the Australian Apple and Pear Growers' Association.

7 Leviable horticultural products

The classes of horticultural products specified in column 2 in the Schedule are prescribed for the purposes of the definition of leviable horticultural products in section 4 of the Collection Act.

8 Monthly returns

- (1) In subregulation (2) *prescribed particulars*, in relation to a return provided in respect of a month in respect of apples or pears by a person who is a first purchaser (other than a prescribed first purchaser), selling agent or producer means:

- (a) the full name and business, or residential, address of that person, not being the address of a post office box or bag;
 - (b) if the address referred to in paragraph (a) is not a satisfactory address for service of documents on that person — such an address, that may be the address of a post office box or bag;
 - (c) the month in which the apples or pears were purchased, sold or used by that person;
 - (d) the quantity:
 - (i) of juicing apples; and
 - (ii) of juicing pears;purchased, sold or used by that person in that month;
 - (e) the quantity:
 - (i) of processing apples; and
 - (ii) of processing pears;purchased, sold or used by that person in that month;
 - (f) the quantity:
 - (i) of apples other than juicing apples or processing apples; and
 - (ii) of pears other than juicing pears or processing pears;purchased, sold or used by that person in that month;
 - (g) the amount of levy payable in respect of each quantity of a prescribed class of apples or pears referred to in subparagraphs (d) (i) and (ii), (e) (i) and (ii) and (f) (i) and (ii) in respect of that month; and
 - (h) the total of the amounts referred to in paragraph (g).
- (2) Subject to subregulation 8A (8), a person who is:
- (a) a first purchaser (other than a prescribed first purchaser) who has in any month purchased apples or pears from a producer of apples or pears; or
 - (b) a selling agent who has in any month sold apples or pears on behalf of a producer of apples or pears;
- shall, on or before the twenty-eighth day of the next succeeding month, lodge with the Secretary at the office of the Department in Canberra a return setting out:
- (c) such of the prescribed particulars as are applicable; and

- (d) a declaration, signed by that person or an authorised agent of that person, that the particulars set out in the return are correct in every material particular.

8A Exemption from monthly returns

- (1) A person mentioned in paragraph 8 (2) (a) or (b) who has reason to believe that, in a calendar year, the amount of his or her liability under subsection 7 (1) of the Collection Act will be less than the prescribed amount, may apply for exemption from the requirement to lodge monthly returns during that year.
- (2) An application shall:
 - (a) be lodged with the Secretary at the office of the Department in Canberra; and
 - (b) set out the following particulars:
 - (i) the full name and business, or residential, address of the applicant;
 - (ii) if the address referred to in subparagraph (i) is not a satisfactory address for service of documents on that person — such an address, that may be the address of a post office box or bag;
 - (iii) a statement that the person is a first purchaser (other than a prescribed first purchaser) or a selling agent who will or may incur, in the calendar year in respect of which the application is made, a liability under subsection 7 (1) of the Collection Act;
 - (iv) a statement that, in the belief of the person, the amount of that liability will be less than the prescribed amount; and
 - (v) a declaration, signed by the person or an authorised agent of the person, that the particulars set out in the application are correct.
- (3) In considering an application, the Secretary shall have regard to:
 - (a) the amount of any liability of the applicant under subsection 7 (1) of the Collection Act in the immediately preceding calendar year; and

- (b) any information that is available to the Secretary about the amount of the liability that the applicant will be likely to incur in the calendar year in which the application is made.
- (4) Within 14 days of the lodgement of the application, the Secretary shall:
 - (a) make a decision to grant or refuse the application; and
 - (b) send notice of the decision to the applicant, addressed to the last-known address of the applicant.
- (5) Where an exemption is in force and the person to whom the exemption relates lodges a return in respect of the calendar year to which the exemption relates, the Secretary shall consider whether to continue the exemption in respect of the next succeeding calendar year.
- (6) In considering whether to continue an exemption in respect of the year last mentioned in subregulation (5), the Secretary shall have regard to:
 - (a) the amount of the liability of the person to whom the exemption relates under subsection 7 (1) of the Collection Act in the immediately preceding calendar year; and
 - (b) any information that is available to the Secretary about the amount of the liability that the person will be likely to incur in the calendar year last mentioned in subregulation (5).
- (7) Within 14 days of lodgement of a return mentioned in subregulation (5), the Secretary shall:
 - (a) make a decision to continue, or to refuse to continue, the exemption; and
 - (b) send notice in writing of the decision to the person to whom the exemption relates, addressed to the last-known address of the person.
- (8) A person is exempt during a calendar year from lodging monthly returns under subregulation 8 (2) if the person has, during that year:
 - (a) lodged an application; or

- (b) lodged an annual return in respect of the immediately preceding calendar year, being a year to which an exemption in respect of the person relates;

and the person has not received notice of a refusal to grant, or of a refusal to continue, an exemption in respect of the first-mentioned year.

- (9) A person who receives notice of a refusal to grant, or of a refusal to continue, an exemption in respect of a calendar year shall lodge a monthly return in accordance with subregulation 8 (2) in respect of each month of that year for which the person would, apart from subregulation (8), have been required to lodge a return:
 - (a) in respect of each of those months that was concluded before the person received the notice — within 28 days of receiving the notice; and
 - (b) in respect of each of those months that was not concluded before the person received the notice — on or before the twenty-eighth day of the next succeeding month.
- (10) In this regulation, *prescribed amount* means \$1,000 or such other amount as the Minister orders for the purposes of this regulation.

9 Annual returns

- (1) Where in any calendar year including the calendar year 1988:
 - (a) a person who is a producer of apples or pears has, after the commencement of these Regulations, sold apples or pears by retail sale or used apples or pears in the production of fruit juice or any other processed product; and
 - (b) the total of:
 - (i) the quantity of apples and pears sold by that producer in that calendar year by retail sale;
 - (ii) the quantity of juicing apples and juicing pears used by that producer in that calendar year in the production in Australia of fruit juice; and
 - (iii) the quantity of processing apples and processing pears used by that producer in that calendar year in

the production in Australia of any processed product other than fruit juice;

is 500 boxes or more;

that person shall, on or before 28 February in the next succeeding calendar year, lodge with the Secretary at the office of the Department in Canberra a return setting out:

- (c) the full name and business, or residential, address of the producer, not being the address of a post office box or bag;
 - (d) if the address referred to in paragraph (c) is not a satisfactory address for service of documents on that person — such an address, that may be the address of a post office box or bag;
 - (e) the calendar year in which the apples and pears were so sold or used;
 - (f) the quantity of each prescribed class of apples, and of pears, so sold;
 - (g) the quantity of juicing apples so used;
 - (h) the quantity of juicing pears so used;
 - (i) the quantity of processing apples so used;
 - (j) the quantity of processing pears so used;
 - (k) the amount of levy payable in respect of each of the quantities referred to in paragraphs (f), (g), (h), (i) and (j);
 - (l) the total of the amounts referred to in paragraph (k); and
 - (m) a declaration, signed by that person or an authorised agent of that person, that the particulars set out in the return are correct in every material particular.
- (2) Where in any calendar year including the calendar year 1988:
- (a) a person who is a prescribed first purchaser has, after the commencement of these Regulations, purchased apples or pears in quantities that, in total, exceed 500 boxes; or
 - (b) a person receives notice of the grant of an exemption, or of a continuation of an exemption, from the requirement to lodge monthly returns, and the person:
 - (i) is a first purchaser (other than a prescribed first purchaser) who has, in that year, purchased apples or pears from a producer of apples or pears; or

- (ii) is a selling agent who has, in that year, sold apples or pears on behalf of a producer of apples or pears;
that person shall, on or before 28 February in the next succeeding calendar year, lodge with the Secretary at the office of the Department in Canberra a return setting out:
- (c) the full name and business, or residential, address of the prescribed first purchaser, not being the address of a post office box or bag;
- (d) if the address referred to in paragraph (c) is not a satisfactory address for service of documents on that person — such an address, that may be the address of a post office box or bag;
- (e) the calendar year in which the apples and pears were so purchased;
- (f) the quantity of each prescribed class of apples, and of pears, so purchased;
- (g) the amount of levy payable in respect of each of the quantities referred to in paragraph (f) (other than an amount of levy included in a monthly return that has been lodged with the Secretary);
- (h) the total of the amounts referred to in paragraph (g); and
- (i) a declaration, signed by that person or an authorised agent of that person, that the particulars set out in the return are correct in every material particular.

10 Records to be kept

A producer of apples or pears shall keep records showing:

- (a) the quantity:
 - (i) of apples other than juicing apples or processing apples; and
 - (ii) of pears other than juicing pears or processing pears; sold by that producer by retail sale in each month;
- (b) the quantity:
 - (i) of juicing apples; and
 - (ii) of juicing pears;used by that producer in the production of fruit juice in each month; and

- (c) the quantity:
 - (i) of processing apples; and
 - (ii) of processing pears;used by that producer in the production of any processed product other than fruit juice in each month.

- Penalty: (a) in the case of a natural person — a fine not exceeding \$500; or
- (b) in the case of a body corporate — a fine not exceeding \$2,500.

- (2) A person who is a first purchaser or selling agent of apples or pears shall keep records showing the quantity of each prescribed class of apples and of pears:
 - (a) purchased by that person from a producer of apples or pears in each month; or
 - (b) sold by that person on behalf of a producer of apples or pears in each month.

- Penalty: (a) in the case of a natural person — a fine not exceeding \$500; or
- (b) in the case of a body corporate — a fine not exceeding \$2,500.

11 Review of decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for the review of a decision of the Secretary:
 - (a) to refuse to grant an exemption under paragraph 8A (4) (a); or
 - (b) to refuse to continue an exemption under paragraph 8A (7) (a).
- (2) Where the Secretary makes a decision mentioned in subregulation (1), the notice of the decision:
 - (a) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and

- (b) shall include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.
- (3) A failure to comply with subregulation (2) in relation to a decision does not affect the validity of the decision.

12 Orders

Subject to section 22 of the Collection Act, the Minister may make orders, not inconsistent with that Act or these Regulations, specifying an amount, not exceeding \$5,000, for the purposes of regulation 8A.

Schedule Rates of Levy

(regulations 4, 6 and 7)

Column 1 Item No.	Column 2 Class of leviable horticultural products	Column 3 Rate
1	Apples excluding juicing apples or processing apples	16 cents per box
2	Pears excluding nashi, juicing pears, juicing nashi, processing pears or processing nashi	16 cents per box
3	Nashi excluding juicing nashi or processing nashi	40 cents per tray
4	Juicing apples	\$1.60 per tonne
5	Juicing pears excluding juicing nashi	\$1.60 per tonne
6	Juicing nashi	\$1.60 per tonne
7	Processing apples	\$3.20 per tonne
8	Processing pears excluding processing nashi	\$3.20 per tonne
9	Processing nashi	\$3.20 per tonne

Table of Statutory Rules

Notes to the Horticultural Levy (Apple and Pear) Regulations**Note 1**

The Horticultural Levy (Apple and Pear) Regulations (in force under the *Horticultural Levy Act 1987* and the *Horticultural Levy Collection Act 1987*) as shown in this compilation comprise Statutory Rules 1988 No. 189 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1988 No. 189	29 July 1988	1 Aug 1988 (<i>see</i> r. 2 and <i>Gazette</i> 1988, No. S216)	
1989 No. 22	2 Mar 1989	1 Dec 1988	—
1989 No. 44	17 Mar 1989	17 Mar 1989	—
1989 No. 345	7 Dec 1989	1 Jan 1990	—
1999 No. 304	15 Dec 1999	Rr. 1–4 and Schedule 1: 1 July 1999 Schedule 2: 1 Jan 2000	R. 3 [see Table A]

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Rr. 3, 4.....	am. 1989 No. 345
R. 5.....	am. 1989 No. 22
R. 6.....	rs. 1989 No. 345
R. 8.....	am. 1989 No. 44
R. 8A.....	ad. 1989 No. 44
R. 9.....	am. 1989 No. 44
Rr. 11, 12.....	ad. 1989 No. 44
Schedule.....	rs. 1989 No. 345

Table A

Table A Application, saving or transitional provisions

Statutory Rules 1999 No. 304

3 Savings for regulations repealed by Schedule 1

Despite the repeal of regulations by Schedule 1 to these Regulations, those regulations (as in force immediately before the commencement of Schedule 1) continue to have effect in relation to levies and charges imposed before the commencement of Schedule 1.