

EXPLANATORY STATEMENT

STATUTORY RULES 1988 No. 189

Issued by the Authority of the Minister for Primary Industries and
Energy

HORTICULTURAL LEVY ACT 1987

HORTICULTURAL LEVY (APPLE AND PEAR) REGULATIONS

Subsection 14 (1) of the Horticultural Levy Act 1987 (the Act)
provides that the Governor-General may make regulations, not
inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out
or giving effect to this Act.

Subsection 4(1) of the Acts Interpretation Act 1901 provides that where an Act is expressed to confer power to make regulations, unless the contrary intention appears, the power may be exercised, and anything may be done for the purpose of enabling the exercise of the power, or of bringing the instrument into effect, before the Act concerned comes into operation, as if it had come into operation. The date of commencement of the Act is 1 August 1988.

Subsection 14 (3) of the Act requires that before making regulations for the purposes of section 8, the Governor-General shall take into consideration any relevant recommendation made to the Minister by the Australian Horticultural Corporation (AHC). As the AHC will not become operational until 1 August 1988, this subsection of the Act is not applicable at this time.

Subsection 14 (4) of the Act requires that before making regulations for the purposes of section 9, the Governor-General shall take into consideration any relevant recommendation made to the Minister by the Horticultural Research and Development Corporation (HRDC). As the HRDC will not become operational until 1 August 1988, this subsection of the Act is not applicable at this time.

Subsection 14(5) of the Act requires that before making regulations for the purposes of section 13 (exemptions from levy), the Governor-General shall take into consideration any relevant recommendation made to the Minister by the AHC or the HRDC. As neither the AHC nor the HRDC will become operational until 1 August 1988, this subsection of the Act is not applicable at this time.

Subsection 14 (6) of the Act requires that before making a recommendation to the Minister for the purposes of subsections 14(3) or (5), the AHC shall consult with the body that, under the regulations, is the eligible industry body for:

- (a) the relevant leviable horticultural products; or
- (b) the relevant class or subclass of leviable horticultural products;

as the case requires.

The proposed Regulations:

- (a) prescribe the Australian Apple and Pear Growers' Association as the eligible industry body in respect of apples and pears;

- (b) prescribe certain classes of apples and pears as 'leviable horticultural products', as provided for in Section 14(2) of the Act; and
- (c) prescribe the operative rates of levy to apply to each class of leviable horticultural product, as provided for in Sections 8 and 9 of the Act.

The Australian Apple and Pear Growers' Association has endorsed the levels of levy set out in the proposed regulations. The level of the levy imposed on apples and pears is the same as that applicable in 1988 under the funding arrangements for the Australian Apple and Pear Corporation (AAPC). The Australian Apple and Pear Corporation Act 1973 and associated Levy and Collection Acts will be repealed on proclamation of commencement of part 7 of the AHC Act.

Details of the Regulations are given in Attachment A.

The Regulations become effective 1 August 1988, upon proclamation of the balance of the Australian Horticultural Corporation Act 1987, and the Horticultural Research and Development Corporation Act 1987.

S.R. No. 94/88

Details of Horticultural Levy (Apple and Pear) Regulations

Regulation 1 provides that the Regulations may be cited as the Horticultural Levy (Apple and Pear) Regulations.

Regulation 2 provides that the Regulations shall come into operation on the date of commencement of the Act. It is proposed that this will occur on 1 August 1988.

Regulation 3 provides an interpretation and definition of various words and expressions used in the Regulations. In particular, the expression 'prescribed first purchaser' is defined. Examples of prescribed first purchasers are: a hotelier, restaurateur, or caterer, who purchases leviable horticultural products from a grower in the course of carrying on such a business. Such businesses are not wholly or substantially a business of selling or processing horticultural products. A prescribed first purchaser will be required to pay levy and submit returns on an annual basis rather than monthly.

Regulation 4 fixes the rates of levy applicable to leviable horticultural products under sections 8 and 9 of the Act (rates set out in Schedule).

Regulation 5 provides for certain subclasses of the prescribed classes of leviable horticultural products to be exempt from levy under section 13 of the Act.

Regulation 6 prescribes the Australian Apple and Pear Growers' Association as the eligible industry body for apples and pears.

Regulation 7 prescribes certain classes of apples and pears as leviable horticultural products for the purposes of the Horticultural Levy Collection Act 1987.

Regulation 8 requires a person required under Section 4 of the Horticultural Levy Collection Regulations to pay levy on a monthly basis, to lodge a return to the Secretary of the Department, detailing the business, address, month of sale, use or purchase, and the levy payable. A declaration signed by the prescribed person should be included.

Regulation 9 requires a person required under Section 4 of the Horticultural Levy Collection Regulations to pay levy on an annual basis, to lodge a return to the Secretary of the Department, detailing the business, address, year of sale, use or purchase, and the levy payable. A declaration signed by the prescribed person should be included.

Regulation 10 makes it an offence for a prescribed person to fail to keep records detailing the quantity of produce sold or used by that person in a month.