



Statutory Rules 1988 No. 189¹

Horticultural Levy (Apple and Pear) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Horticultural Levy Act 1987* and the *Horticultural Levy Collection Act 1987*.

Dated 25 July 1988.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

JOHN KERIN
Minister of State for Primary
Industries and Energy

Citation

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

Commencement

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

Interpretation

3. (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;

“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*.

(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.

Rates of levy

4. 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 92.5% of the rate specified in that item; and
- (b) the rate of levy for the purposes of section 9 of the Levy Act is 7.5% of the rate specified in that item.

Exemption from levy

5. 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 on which levy is, or becomes, payable under the *Canned Fruits Levy Act 1979*.

Eligible industry body

6. For the purposes of subsections 14 (6) and (7) of the Levy Act, the Australian Apple and Pear Growers' Association is the eligible industry body for the classes of leviable horticultural products specified in column 2 in the Schedule.

Leviable horticultural products

7. 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.

Monthly returns

8. (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) 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.

Annual returns

9. (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; and
- (b) the total of the quantities of apples and of pears so purchased exceeds 500 boxes;

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);
- (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.

Records to be kept

10. 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.

SCHEDULE

Regulations 4, 6 and 7

RATES OF LEVY

Column 1 Item	Column 2 Class of leviable horticultural products	Column 3 Rate
1	Apples other than juicing apples or processing apples	12 cents per box
2	Pears other than juicing pears or processing pears	12 cents per box
3	Juicing apples	\$1.20 per tonne
4	Juicing pears	\$1.20 per tonne
5	Processing apples	\$2.40 per tonne
6	Processing pears	\$2.40 per tonne

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 29 July 1988.