EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 192

Issued by the Authority of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry

Primary Industries (Excise) Levies Act 1999
Primary Industries (Customs) Charges Act 1999
Primary Industries Levies and Charges Collection Act 1991

Primary Industries (Excise) Levies Amendment Regulations 2006 (No. 4)
Primary Industries (Customs) Charges Amendment Regulations 2006 (No. 4)
Primary Industries Levies and Charges Collection Amendment Regulations 2006 (No. 5)

Section 8 of the Primary Industries (Excise) Levies Act 1999 (the Levies Act), section 8 of the Primary Industries (Customs) Charges Act 1999 (the Charges Act) and section 30 of the Primary Industries Levies and Charges Collection Act 1991 (the Collection Act) provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to each Act.

The purpose of the Regulations is to introduce new Commonwealth marketing and research and development (R&D) levies and export charges on turf producers. The combined levy and export charge of 1.5 cents per square metre will be imposed on all varieties of turf produced in and sold in Australia or exported from Australia, and will be collected at the first point of sale. The turf production levy and charge will be apportioned 80% to R&D (1.2 cents per square metre of turf sold) and 20% to marketing (0.3 of a cent per square metre of turf sold). A turf producer who “deals with” 20,000 square metres or less of turf in a levy year will be exempt from paying the levy and charge (“deals with” means selling turf within Australia, or exporting turf from Australia, or both). Currently, there are no Commonwealth levies or export charges on turf.

Horticulture Australia Limited (HAL) is the relevant industry services body for the administration of the turf industry levy and charge scheme and will be the body to manage moneys collected from the levies and export charges imposed on turf producers. HAL co-ordinates marketing and R&D programs for many horticultural industries. HAL is funded by statutory levies and export charges, voluntary contributions and Australian Government matching funding for eligible R&D expenditure. This matching funding is provided under the Horticultural Marketing and Research and Development Services Act 2000.

Primary Industries (Excise) Levies Regulations 1999
Subclause 4(1) of Schedule 15 to the Levies Act provides that regulations may fix rates of levy for marketing purposes.

Subclause 4(3) of Schedule 15 to the Levies Act provides that regulations may fix rates of levy for R&D purposes.
Subclause 6(4) of Schedule 15 to the Levies Act provides that before the Governor-General makes regulations to fix rates of levy for marketing, the Minister must take into consideration any relevant recommendations made to the Minister by HAL.

Subclause 6(6) of Schedule 15 to the Levies Act provides that before the Governor-General makes regulations to fix rates of levy for R&D, the Minister must take into consideration any relevant recommendations made to the Minister by HAL.

Subclause 6(7) of Schedule 15 to the Levies Act requires HAL to consult with the body that is the eligible industry body for the relevant horticultural product before recommending rates of levy for marketing to the Minister.

Subclause 6(8) of Schedule 15 to the Levies Act requires HAL to consult with the body that is the eligible industry body for the relevant horticultural product before recommending rates of levy for R&D to the Minister.

Subclause 6(9) of Schedule 15 to the Levies Act requires that a recommendation made by HAL to the Minister be accompanied by a written statement of the views of the industry body consulted in relation to the recommendation.

The Regulations prescribe Turf Producers Australia Limited (TPAL) as the eligible industry body with which HAL must consult in relation to turf. HAL recommended the initial operative rates of levy to the Minister after consultation with TPAL. The Regulations give effect to the recommendations of HAL, which are consistent with the turf industry's request.

*Primary Industries (Customs) Charges Regulations 2000*  
Subclause 3(3) of Schedule 10 to the Charges Act provides that regulations may fix rates of export charge for marketing purposes.

Subclause 3(5) of Schedule 10 to the Charges Act provides that regulations may fix rates of export charge for R&D purposes.

Subclause 5(3) of Schedule 10 to the Charges Act provides that before the Governor-General makes regulations to fix rates of export charge for marketing, the Minister must take into consideration any relevant recommendations made to the Minister by HAL.

Subclause 5(5) of Schedule 10 to the Charges Act provides that before the Governor-General makes regulations to fix rates of export charge for R&D, the Minister must take into consideration any relevant recommendations made to the Minister by HAL.

Subclause 5(6) of Schedule 10 to the Charges Act requires HAL to consult with the body that is the eligible industry body for the relevant horticultural product before recommending rates of export charge for marketing to the Minister.

Subclause 5(7) of Schedule 10 to the Charges Act requires HAL to consult with the body that is the eligible industry body for the relevant horticultural product before recommending rates of export charge for R&D to the Minister.

Subclause 5(8) of Schedule 10 to the Charges Act requires that a recommendation made by HAL to the Minister be accompanied by a written statement of the views of the industry body consulted in relation to the recommendation.
The Regulations prescribe Turf Producers Australia Limited (TPAL) as the eligible industry body with which HAL must consult in relation to turf. HAL recommended the initial operative rates of export charge to the Minister after consultation with TPAL. The Regulations give effect to the recommendations of HAL, which are consistent with the turf industry's request.

*Primary Industries Levies and Charges Collection Regulations 1991*

The Collection Act specifies no conditions that need to be met before the power to make Regulations may be exercised.

Schedule 22 to the *Primary Industries Levies and Charges Collection Regulations 1991* sets out the details for payment of levy and export charge, provision of returns by liable persons and other collection matters for various leviable horticultural products.

The turf levy and export charge is expected to raise around $1.4 million annually. After deducting collection costs and the HAL administrative fee, it is expected there would be around $300,000 available for the marketing program and $2.0 million available for the R&D program (including government matching funds).

TPAL conducted a thorough consultation campaign with all known potential levy payers in all Australian states informing producers of the proposal and its benefits prior to a national ballot. As well as holding state industry consultation meetings, TPAL directors ensured levy proposal letters were sent to all known turf producers as well as ensuring the levy proposal was well detailed in three issues of the national Turf Craft International magazine. A ballot of turf producers was conducted in October 2004 by an independent returning officer. Ballot papers were sent to 450 turf growers throughout Australia. The proposal to implement the turf levy and export charge received majority support from those growers who chose to vote.

The Australian Government subsequently decided that a new ballot of turf producers should be conducted through the Australian Electoral Commission. The ballot, which was widely advertised, was conducted in May 2006 with ballot papers being sent to the 526 entries on the roll of voters. Again the proposal to implement the turf levy and export charge received majority support from those growers who chose to vote.

Details of the Regulations are contained in the attachment.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The Office of Regulation Review was consulted in the preparation of the Regulations. A Regulation Impact Statement is attached, as Annex "A".

The Regulations commence on 1 October 2006, the start date requested by TPAL.
DETAILS OF THE PROPOSED PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2006 (No. 4)

Regulation 1 – Name of Regulations

This Regulation provides for the name of the Regulations to be the *Primary Industries (Excise) Levies Amendment Regulations 2006 (No. 4)*.

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 October 2006.

Regulation 3 – Amendment of Primary Industries (Excise) Levies Regulations 1999

This regulation provides that Schedule 1 amends the *Primary Industries (Excise) Levies Regulations 1999* (the Excise Levies Regulations).

Schedule 1 Amendments


Clause 26.1 provides that turf is a leviable horticultural product for the purposes of the definition in clause 1 of Schedule 15 to the *Primary Industries (Excise) Levies Act 1999*.

Subclause 26.2(1) specifies that a turf producer who deals with 20,000 square metres or less of turf in a levy year is exempt from paying the levy.

Subclause 26.2(2) provides for a definition of “deal with” in subclause 26.2(1).

Clause 26.3 sets an initial operative rate of marketing levy on turf of 0.3 of a cent per square metre.

Clause 26.4 sets an initial operative rate of R&D levy on turf of 1.2 cents per square metre.

Clause 26.5 provides that Turf Producers Australia Limited is the eligible industry body for turf.

DETAILS OF THE PROPOSED PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT REGULATIONS 2006 (No. 4)

Regulation 1 – Name of Regulations

This Regulation provides for the name of the Regulations to be the *Primary Industries (Customs) Charges Amendment Regulations 2006 (No. 4)*.

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 October 2006.
Regulation 3 – Amendment of Primary Industries (Customs) Charges Amendment Regulations 2000

This regulation provides that Schedule 1 amends the Primary Industries (Customs) Charges Regulations 2000 (the Customs Charges Regulations).

Schedule 1 Amendments

Item [1] – inserts a new Part 26 about turf into Schedule 10 to the Customs Charges Regulations.

Clause 26.1 provides that turf is a chargeable horticultural product for the purposes of the definition in clause 1 of Schedule 10 to the Primary Industries (Customs) Charges Act 1999.

Subclause 26.2(1) specifies that a turf producer who deals with 20,000 square metres or less of turf in a levy year is exempt from paying the charge.

Subclause 26.2(2) provides for a definition of “deal with” in subclause 26.2(1).

Clause 26.3 sets an initial operative rate of marketing charge on turf of 0.3 of a cent per square metre.

Clause 26.4 sets an initial operative rate of R&D charge on turf of 1.2 cents per square metre.

Clause 26.5 provides that Turf Producers Australia Limited is the eligible industry body for turf.

DETAILS OF THE PROPOSED PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2006 (No. 5)

Regulation 1 – Name of Regulations

This Regulation provides for the name of the regulations to be the Primary Industries Levies and Charges Collection Amendment Regulations 2006 (No. 5).

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 October 2006.

Regulation 3 – Amendment of Primary Industries Levies and Charges Collection Regulations 1991

This regulation provides that Schedule 1 amends the Primary Industries Levies and Charges Collection Regulations 1991 (the Collection Regulations).

Schedule 1 Amendments

Item [1] - inserts a new Part 26 about turf into Schedule 22 to the Collection Regulations.

Clause 26.1 provides that the Part applies to turf.
Clause 26.2 provides definitions for use in the Part. The definitions are for “chargeable turf”, “deal”, “exporter”, and “leviable turf”.

- Note 1 provides a cross-reference to turf being a chargeable horticultural product.
- Note 2 provides a cross-reference to turf being a leviable horticultural product.

Clause 26.3 provides that a levy year for turf is a financial year.

Clause 26.4 prescribes turf for the definition of “producer”.

- Note 1 clarifies that a producer is the person who owns the product immediately after it is harvested (as defined in paragraph (b) of the definition of producer in the Primary Industries Levies and Charges Collection Act 1991).
- Note 2 identifies the person who exports chargeable horticultural products, in this case turf, from Australia as a producer.

Clause 26.5 prescribes that for people who lodge quarterly returns, levy or charge is due for payment 28 days after the end of the quarter to which the levy or charge relates (being the last day on which the quarterly return for the quarter must be lodged as set out in clause 26.7, below).

- The note indicates penalties can be imposed under section 15 of the Collection Act for late payment.

Clause 26.6 prescribes that the following persons who deal in leviable or chargeable turf in a quarter must lodge a return for a quarter, unless that person is granted an exemption to lodging quarterly returns:

- A producer who sells turf in the quarter;
- An exporter who exports turf in the quarter.

- The note indicates offences under section 24 of the Collection Act may be applicable if a return is not submitted.

Clause 26.7 provides that a quarterly return must be lodged within 28 days of the end of the quarter to which it relates.

- The note indicates offences under section 24 of the Collection Act may be applicable.

Clause 26.8 prescribes that for people who lodge annual returns, levy or charge is due for payment on 28 August in the following levy year (being the last day on which the annual return for the levy year must be lodged as set out in clause 26.10, below).

- The note indicates penalties can be imposed under section 15 of the Collection Act for late payment.

Clause 26.9 specifies that the following persons who deal in leviable or chargeable turf must lodge an annual return if they are exempt from lodging quarterly returns:

- A producer who sells turf in the levy year;
- An exporter who exports turf in the levy year.

- The note indicates offences under section 24 of the Collection Act may be applicable if a return is not submitted.

Clause 26.10 prescribes that an annual return must be lodged by 28 August in the next levy year.

- The note indicates offences under section 24 of the Collection Act may be applicable if a return is not submitted.
Clause 26.11 stipulates what information must be included in a quarterly or annual return.
· Note indicates offences under section 24 of the Collection Act may be applicable if information is not provided.

Clause 26.12 specifies who may apply to be exempt from the requirement to lodge a quarterly return in a levy year but lodge an annual return instead. The main criterion is that the person has reasonable grounds for believing that the total amount of levy and charge payable in the levy year is likely to be less than $750.

Clause 26.13 specifies what information must be included in a written application for exemption from the requirement to lodge a quarterly return, and in its place be allowed to lodge an annual return for that levy year.

Clause 26.14 stipulates the conditions for granting or refusing an exemption from the requirement to lodge quarterly returns. The applicant is to be given written notice of the decision.

Clause 26.15 stipulates what conditions apply for continuing an exemption from lodging a quarterly return. The applicant is to be given written notice of the decision.

Clause 26.16 stipulates when a quarterly return is to be lodged if exemption is refused or not continued.
· The note indicates offences under section 24 of the Collection Act may be applicable if a return is not submitted.

Clause 26.17 stipulates what records must be kept by producers. A penalty of 10 penalty units is provided for breaches of this clause. Section 4AA of the *Crimes Act 1914* provides that a penalty unit equals $110. An offence under this clause is an offence of strict liability.
· The note provides a cross-reference to offences in relation to how long records must be kept.

Clause 26.18 stipulates what records must be kept by exporters and exporting agents. A penalty of 10 penalty units is provided for breaches of this clause. An offence under this clause is an offence of strict liability.
· The note provides a cross-reference to offences in relation to how long records must be kept.

Clause 26.19 stipulates that a person may apply to the Administrative Appeals Tribunal for a review of a decision made by the Secretary relating to the grant or refusal to grant an exemption under paragraphs 26.14(1)(a) or 26.15(1)(a) of these Regulations.