EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 26

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 2007 (No. 1)
Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 1)
Primary Industries Levies and Charges Collection Amendment Regulations 2007 (No. 1)

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 implement a proposal by Avocados Australia Limited (AAL) to change rates and other aspects of the statutory avocado levy and export charge that is payable to Horticulture Australia Limited (HAL). HAL is the relevant industry services body for the administration of the avocado levy and charge for marketing and research and development (R&D). HAL co-ordinates marketing and R&D programs for many horticultural industries and 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.

Specifically, the Regulations:
- increase the fresh avocado marketing levy and export charge from 2.5 cents per kilogram to 4.5 cents per kilogram;
- increase the fresh avocado R&D levy and export charge from 1.333 cents per kilogram to 3.0 cents per kilogram;
- set a new R&D levy on avocados directed to processing of 1.0 cent per kilogram; and
- exempt avocados sold by a producer by retail sale from levy if the producer would otherwise be liable for less than $100 in levy on retail sales in a levy year.

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 *Primary Industries (Excise) Levies Regulations 1999* prescribe AAL as the eligible industry body with which HAL must consult in relation to avocados. HAL recommended the changes in operative rates of levy to the Minister after consultation with AAL. The Regulations give effect to the recommendations of HAL, which are consistent with the avocado 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 *Primary Industries (Customs) Charges Regulations 2000* prescribe AAL as the eligible industry body with which HAL must consult in relation to avocados. HAL recommended the changes in operative rates of export charge to the Minister after consultation with AAL. The Regulations give effect to the recommendations of HAL, which are consistent with the avocado 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.

AAL’s objective in proposing increases in the avocado levies and export charges for marketing and R&D is to enable the avocado industry to fund the objectives of its 2005-2010 Strategic Plan as well as to restore value to the levy dollar collected. The value of levy monies has declined through increases in the CPI while the cost of each R&D project has risen from $53,000 in 1998 to around $95,000 in 2005. AAL’s objective in proposing an exemption from levy for avocados sold by a producer by retail sale is to minimise the collection costs imposed on the industry by the Levies Revenue Service which operates on a cost-recovery basis.

In 2005-06 the avocado levy and export charge raised $1.36 million. The changes to the avocado levy and charge are expected to raise around an additional $1.3 million annually, including about $600,000 for R&D. After allowing for the HAL management fee, the additional R&D monies would result in a further requirement of $540,000 annually in Australian Government matching funds.

AAL conducted a thorough consultation campaign with all known potential levy payers. Motions for the proposed changes were put to avocado levy payers at the Annual Avocado Levy Payers Meeting in Nambour, Queensland, on 24 November 2005. Growers were able to vote either in person or by proxy. The proposed changes were passed by a clear majority: 71 per cent support for the marketing and R&D levy and charge increase; 89 per cent support for the R&D levy on avocados directed to processing; and 91 per cent support for the motion concerning retail sales. The proposal to implement the avocado levy and export charge changes 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 (ORR) was consulted in the preparation of the Regulations. The ORR advised that a Regulation Impact Statement was not required (ORR ID no. 8681).

The Regulations commence on 1 April 2007, the start date requested by AAL.
DETAILS OF THE PROPOSED PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2007 (No. 1)

Regulation 1 – Name of Regulations

This Regulation provides for the name of the Regulations to be the Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 1).

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 April 2007.

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

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

Schedule 1 Amendments

Item [1] – deletes the note at clause 4.1 which stated “Clause 4.2 intentionally not used”.


- clause 4.2 specifies that avocados sold by a producer by retail sale are exempt from levy if the producer would otherwise be liable for less than $100 in levy on retail sales in a levy year.
  - Note 1 provides that “retail sale” is defined in the Primary Industries Levies and Charges Collection Regulations 1991.
  - Note 2 indicates that levy is not imposed on leviable horticultural products that are exported from Australia.

- clause 4.3 sets an operative rate of marketing levy on fresh avocados of 4.5 cents per kilogram.

- clause 4.4 sets an operative rate of R&D levy on fresh avocados of 3.0 cents per kilogram and sets an operative rate of R&D levy on processing avocados of 1.0 cent per kilogram.
  - Note provides that “fresh avocados” and “processing avocados” are defined in the Primary Industries Levies and Charges Collection Regulations 1991.
DETAILS OF THE PROPOSED PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT REGULATIONS 2007 (No. 1)

Regulation 1 – Name of Regulations

This Regulation provides for the name of the Regulations to be the Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 1).

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 April 2007.

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.

Schedule 1 Amendments


- clause 4.3 sets an operative rate of marketing charge on avocados of 4.5 cents per kilogram.

- clause 4.4 sets an operative rate of R&D charge on avocados of 3.0 cents per kilogram.

- Note indicates that charge is not imposed on horticultural products that are exported from Australia if a levy on that product has already been paid.
DETAILS OF THE PROPOSED PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2007 (No. 1)

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 2007 (No. 1).

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 April 2007.

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.

Schedule 1 Amendments

Item [1] – amends Schedule 22, clause 4.2 by omitting the definition of “avocados in bulk”.

Item [2] – amends Schedule 22, clause 4.2 by specifying a new definition for “deal” meaning sell, buy, process or export.

Item [3] – amends Schedule 22, clause 4.2 by inserting a definition for “fresh avocados” meaning avocados other than processing avocados.

Item [4] – amends Schedule 22, clause 4.2 by inserting a definition for “processing avocados” meaning avocados which will be sold by a producer to a first purchaser for processing or processed by the producer.

Item [5] – amends Schedule 22, clause 4.2 by specifying a new definition for “retail sale” meaning selling through a selling agent, a buying agent, an exporting agent or at a wholesale produce market.

Item [6] – amends Schedule 22, clause 4.2 by omitting the definition of “standard tray”.

Item [7] - amends Schedule 22 by inserting after clause 4.3 new clauses 4.3A, 4.3B and 4.3C.

- clause 4.3A prescribes operations (fruit conditioning operations, cleaning, sorting, grading and packing) that are not considered processes in relation to avocados.

- clause 4.3B defines who is a processor of avocados.
  - Note identifies a processor to be the proprietor of the processing establishment that processes the product, unless immediately before delivery, the proprietor of another processing establishment (who is then defined to be the processor) owns the product.

- clause 4.3C prescribes avocados for the purpose of paragraph 7(2)(b) of the Collection Act in relation to the liability of processors.
  - Note indicates that processors are liable to pay, on behalf of producers, any unpaid levy and/or late payment penalty.
Item [8] - substitutes clause 4.5 in Schedule 22 by specifying when charge or levy is due for payment for people who lodge quarterly returns.

Item [9] - substitutes Schedule 22, paragraph 4.6(1)(e) with new paragraphs 4.6(1)(e), (f) and (g) by prescribing exporting agents, a processor and a producer as having to lodge quarterly returns.

Item [10] - substitutes clause 4.8 in Schedule 22 by specifying when charge or levy is due for payment for people who lodge annual returns.
  • Note indicates that penalties can be imposed for late payment.

Item [11] - amends Schedule 22, clause 4.11, which stipulates what must be included in a return, to include information on fresh and processing avocados.
  • Note indicates that offences under section 24 of the Collection Act may be applicable if information is not provided.

Item [12] - amends Schedule 22, subclause 4.12(1) by substituting the quantity ‘36 tonnes’ for ‘6,000 standard trays’ when specifying 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 quantity of avocados dealt with in a levy year is likely to be less than 36 tonnes.

Item [13] - amends Schedule 22, paragraph 4.13(1)(c) by substituting the quantity ‘36 tonnes’ for ‘6,000 standard trays’ when specifying that when applying for exemption a producer include a statement that they believe that the total quantity of avocados subject to levy or charge in a levy year is likely to be less than 36 tonnes. A written application for exemption from the requirement to lodge a quarterly return must include a statement that the applicant believes that the total quantity of avocados subject to levy or charge in a levy year is likely to be less than 36 tonnes.

Item [14] - substitutes Schedule 22, paragraph 4.17(1)(c) with new paragraphs 4.17(1)(c) and (d) by prescribing what records must be kept by producers of fresh and processing avocados.

Item [15] - substitutes subclause 4.18(1) in Schedule 22 by prescribing what records must be kept by first purchasers and buying agents of fresh and processing avocados. A penalty of 10 penalty units is provided for breaches of the regulations. Section 4AA of the Crimes Act 1914 provides that a penalty unit equals $110.

Item [16] - substitutes subclause 4.20(1) in Schedule 22 by prescribing what records must be kept by selling agents of fresh and processing avocados. A penalty of 10 penalty units is provided for breaches of the regulations.

Item [17] - inserts a new clause 4.20A in Schedule 22 by prescribing what records must be kept by processors of processing avocados. A penalty of 10 penalty units is provided for breaches of the regulations. An offence under this clause is an offence of strict liability.
  • Note provides that the definition of strict liability can be found in section 6.1 of the Criminal Code.