Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 1)'

Select Legislative Instrument 2008 No. 86

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Primary Industries Levies and Charges Collection Act 1991.

Dated 30 May 2008

P. M. JEFFERY
Governor-General

By His Excellency’s Command

TONY BURKE
Minister for Agriculture, Fisheries and Forestry
1 Name of Regulations

These Regulations are the Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 1).

2 Commencement

These Regulations commence on 1 July 2008.

3 Amendment of Primary Industries Levies and Charges Collection Regulations 1991

Schedule 1 amends the Primary Industries Levies and Charges Collection Regulations 1991.

Schedule 1 Amendment

(regulation 3)

[1] Schedule 22, after Part 26

insert

Part 27 Bananas

27.1 Application

This Part applies to bananas.

27.2 Definitions for Part 27

In this Part:

banana means a fruit of any species of the genus Musa.

deal means sell or buy.

leviable bananas means bananas that are not exempt from levy under clause 27.2 of Schedule 15 to the Excise Levies Regulations.
retail sale, for a sale of bananas by a producer, means a sale by
the producer of the bananas except a sale:
(a) to a first purchaser; or
(b) through a selling agent, buying agent or exporting agent; or
(c) at a wholesale produce market.

Note Bananas are leviable horticultural products — see Part 27 of
Schedule 15 to the Excise Levies Regulations.

27.3 What is a levy year
For the definition of levy year in subsection 4 (1) of the
Collection Act, a levy year for bananas is a financial year.

27.4 What is not a process
For the definition of process in subsection 4 (1) of the
Collection Act, the following operations are prescribed for
bananas:
(a) fruit conditioning processes including storage and
  ripening;
(b) cleaning;
(c) sorting;
(d) grading;
(e) packing.

27.5 Who is a producer
For paragraph (b) of the definition of producer in
subsection 4 (1) of the Collection Act, bananas are prescribed.

Note Paragraph (b) of the definition of producer in subsection 4 (1) of the
Collection Act provides that, for a product that is prescribed for that
paragraph, producer means:
(a) where a marketing law vests the product in a person or body or in the
  Crown in right of a State at or before the time the product is
  harvested — the person who would have owned the product but for the
  marketing law; or
(b) if paragraph (a) does not apply — the person who owns the product
  immediately after it is harvested.
27.6 **When is levy due for payment — people who lodge quarterly returns**

For section 6 of the Collection Act, a levy payable for a quarter on bananas is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 27.8.

*Note* For penalty for late payment, see section 15 of the Collection Act.

27.7 **Who must lodge a quarterly return**

(1) The following persons must lodge a return for a quarter:

(a) a first purchaser who buys bananas in the quarter;
(b) a buying agent who buys bananas in the quarter;
(c) a selling agent who sells bananas in the quarter;
(d) a producer who sells leviable bananas other than by retail sale in the quarter.

*Note* For offences in relation to returns, see section 24 of the Collection Act.

(2) However, such a person does not have to lodge quarterly returns in a levy year if:

(a) the person has applied under clause 27.13 for an exemption for the year and has not received notice of the Secretary’s decision; or

(b) the Secretary has granted the person an exemption for the year under paragraph 27.15 (1) (a), or has continued the person’s exemption under paragraph 27.16 (1) (a); or

(c) the Secretary is required, under paragraph 27.16 (1) (a), to decide whether to continue the person’s exemption and the person has not received notice of the Secretary’s decision.

27.8 **When must a quarterly return be lodged**

A quarterly return must be lodged within 28 days after the end of the quarter to which it relates.

*Note* For offences in relation to returns, see section 24 of the Collection Act.
27.9 When is levy due for payment — people who lodge annual returns

For section 6 of the Collection Act, a levy payable on bananas for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 27.11.

Note For penalty for late payment, see section 15 of the Collection Act.

27.10 Who must lodge an annual return

(1) A producer who sells leviable bananas by retail sale in a levy year must lodge a return for the levy year.

(2) A return for a levy year must be lodged by a person mentioned in subclause 27.7 (1) if the person was exempted from lodging a quarterly return in the levy year.

Note For offences in relation to returns, see section 24 of the Collection Act.

27.11 When must an annual return be lodged

A return for a levy year must be lodged on or before 28 August in the next levy year.

Note For offences in relation to returns, see section 24 of the Collection Act.

27.12 What must be included in a return

In addition to the information required by regulation 10, a return for a quarter or levy year must state, for the quarter or levy year:

(a) the quantities of leviable bananas dealt with by the person lodging the return; and

(b) the amount of levy payable for the bananas; and

(c) the amount of levy paid by that person for the bananas.

Note For offences in relation to returns, see section 24 of the Collection Act.
27.13 Exemption from lodging quarterly returns

A person may apply for exemption from the requirement to lodge quarterly returns in a levy year if the person has reasonable grounds for believing that the sum of levy on bananas that the person will pay, or be likely to pay, in the levy year, will be less than $500.

27.14 Form of application for exemption

(1) An application for exemption must include:
   (a) the applicant’s personal details; and
   (b) a statement by the applicant that:
      (i) the applicant is, or may become, liable to pay levy on bananas for the levy year; or
      (ii) the applicant is, or may become, liable to pay an amount under subsection 7 (1) or (3) of the Collection Act, in relation to bananas, for the levy year; and
   (c) a statement by the applicant that the applicant believes that the sum of levy on bananas that the applicant will pay, or be likely to pay, in the levy year will be less than $500.

(2) An application must be sent to the Secretary’s postal address.

27.15 Grant or refusal of exemption

(1) The Secretary must, within 14 days after receiving an application:
   (a) decide whether to grant the exemption; and
   (b) give the applicant written notice of the decision.

(2) In deciding whether to grant an exemption from the requirement to lodge quarterly returns for a levy year, the Secretary must have regard to:
   (a) the amount of levy, or intermediary amount, payable by the applicant for the preceding levy year; and
   (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7 (1), (2) or (3) of the Collection Act in the levy year to which the application relates.
27.16 **Continuation of exemption**

(1) If a person who is exempt from lodging quarterly returns in a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:

(a) decide whether to continue the exemption for the next levy year; and  
(b) give the person written notice of the decision.

(2) In deciding whether to continue a person’s exemption, the Secretary must have regard to:

(a) the amount of levy, or intermediary amount, payable by the applicant for the preceding levy year; and

(b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7 (1), (2) or (3) of the Collection Act in the next levy year.

27.17 **When must a quarterly return be lodged if exemption refused or not continued**

If a person receives notice of a refusal to grant, or of a refusal to continue, an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in the levy year:

(a) if the quarter ended before the person received the notice — within 28 days of receiving the notice; and  
(b) otherwise — within 28 days after the end of the quarter.

*Note* For offences in relation to returns, see section 24 of the Collection Act.

27.18 **What records must be kept — producers**

(1) A producer must keep records showing, in respect of a quarter, or levy year, as the case requires:

(a) the quantity of leviable bananas sold by the producer in the quarter; and

(b) the amount of levy payable on the bananas; and
(c) the amount of levy paid by the producer for the bananas.

Penalty: 10 penalty units.

*Note* For offences in relation to how long records must be kept, see regulation 12.

(2) An offence against subclause (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

27.19 **What records must be kept — first purchasers and buying agents**

(1) A first purchaser and a buying agent must keep records showing, in respect of a quarter:

(a) the quantity of bananas bought by the first purchaser or buying agent in the quarter; and

(b) the amount of levy payable on the bananas; and

(c) the amount of levy paid by the first purchaser or buying agent for the bananas.

Penalty: 10 penalty units.

*Note* For offences in relation to how long records must be kept, see regulation 12.

(2) An offence against subclause (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

27.20 **What records must be kept — selling agents**

(1) A selling agent must keep records showing, in respect of a quarter:

(a) the quantity of bananas sold by the selling agent in the quarter; and

(b) the amount of levy payable on the bananas; and

(c) the amount of levy paid by the selling agent for the bananas.

Penalty: 10 penalty units.

*Note* For offences in relation to how long records must be kept, see regulation 12.
(2) An offence against subclause (1) is an offence of strict liability.

Note For strict liability, see section 6.1 of the Criminal Code.

27.21 Review of decisions

A person may apply to the Administrative Appeals Tribunal for the review of a decision by the Secretary:

(a) refusing to grant an exemption under paragraph 27.15 (1) (a); or

(b) refusing to continue an exemption under paragraph 27.16 (1) (a).

Note