EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 86

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

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

Primary Industries (Excise) Levies Amendment Regulations 2008 (No. 2)
Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 1)

Section 8 of the Primary Industries (Excise) Levies Act 1999 (the Levies 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 on banana growers. The combined levy of 1.7 cents per kilogram would be imposed on all varieties of bananas of any species of the genus Musa and would be collected at the first point of sale. The banana grower levy would be apportioned 1.16 cents per kilogram for marketing and 0.54 of a cent per kilogram for R&D. Currently, there are no Commonwealth levies on bananas. The proposed levy would apply to bananas sold on the fresh domestic market. The proposed levy would not apply to bananas directed to processing nor is there to be an export charge on bananas exported, as these outlets utilise only negligible quantities of bananas. In addition, bananas sold directly by a grower to the public would be exempt from levy if the grower would otherwise be liable for less than $100 in levy on such sales in a financial year.

Horticulture Australia Limited (HAL) would be the relevant industry services body for the administration of the banana industry levy scheme and would be the body to manage moneys collected from the levies imposed on banana growers. 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 the Australian Banana Growers’ Council Inc. (ABGC) as the eligible industry body with which HAL must consult in relation to bananas. HAL recommended the initial operative rates of levy to the Minister after consultation with the ABGC. The Regulations give effect to the recommendations of HAL, which are consistent with the banana industry's request.

*Primary Industries Levies and Charges Collection Regulations 1991*

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 banana levy is expected to raise $4.4 million annually, $3.0 million for marketing and $1.4 million for R&D. After deducting levy collection costs and the HAL administrative fee it is expected there would be around $2.4 million available annually for the marketing program and $2.4 million available for the R&D program (including $1.2 million in government matching funds).

The ABGC undertook an extensive consultation and ballot process. The ballot was conducted by private balloting company *Registries Limited* in May-June 2007. Ballots were sent to 796 potential levy payers, with approximately 36 per cent choosing to participate in the ballot. The ballot delivered a positive result in favour of the levy proposal both on a one vote per enterprise basis and on a production-weighted basis. The one vote per enterprise vote was 186 growers (67.3 per cent) in favour and 90 growers (32.6 per cent) against. On a production-weighted basis the result was 1303 votes (88.2 per cent) in favour and 175 votes (11.8 per cent) against. The proposal to implement the banana levy 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 Best practice Regulation (OPBR) was consulted in the preparation of the Regulations. A Regulation Impact Statement is attached, as Annex "A".

The Regulations commence on 1 July 2008, the start date requested by the ABGC.

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DETAILS OF THE PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2008 (No. 2)

Regulation 1 – Name of Regulations

This regulation provides for the name of the Regulations to be the *Primary Industries (Excise) Levies Amendment Regulations 2008 (No. 2)*.

Regulation 2 – Commencement

This regulation provides for the commencement date to be 1 July 2008.

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 27.1 provides that bananas are 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 27.2(1) specifies that bananas 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.

· The note provides that “retail sale” is defined in the *Primary Industries Levies and Charges Collection Regulations 1991*.

Subclause 27.2(2) specifies that bananas directed to processing are to be exempt from levy.

· The note prescribes operations that are not considered processes for the definition of process in the *Primary Industries Levies and Charges Collection Regulations 1991*.

Clause 27.3 sets an initial operative rate of marketing levy on bananas of 1.16 cents per kilogram.

· The note indicates that levy is not imposed on leviable horticultural products that are exported from Australia.

Clause 27.4 sets an initial operative rate of R&D levy on bananas of 0.54 of a cent per kilogram

· The note indicates that levy is not imposed on leviable horticultural products that are exported from Australia.

Clause 27.5 provides that the Australian Banana Growers’ Council Inc. (ABN 60 381 740 734) is the eligible industry body for bananas.
DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2008 (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 2008 (No. 1).

Regulation 2 – Commencement

This regulation provides for the commencement date to be 1 July 2008.

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 27 about bananas into Schedule 22 to the Collection Regulations.

Clause 27.1 provides that the Part applies to bananas.

Clause 27.2 provides definitions for use in the Part. The definitions are for “banana”, “deal”, “leviable bananas” and “retail sale”.

· The note provides a cross-reference to bananas being a leviable horticultural product.

Clause 27.3 provides that a levy year for bananas is a financial year.

Clause 27.4 prescribes operations (fruit conditioning operations, cleaning, sorting, grading and packing) that are not considered processes for bananas sold or used by a producer for processing. Bananas directed to processing are exempt from levy under subclause 27.2(2) of Schedule 15 to the Excise Levies Regulations.

Clause 27.5 prescribes bananas for the definition of “producer”.

· The note 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 Collection Act).

Clause 27.6 prescribes that for people who lodge quarterly returns, levy is due for payment 28 days after the end of the quarter to which the levy relates (being the last day on which the quarterly return for the quarter must be lodged as set out in clause 27.8, below).

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

Clause 27.7 prescribes that the following persons who deal in leviable bananas in a quarter must lodge a return for a quarter, unless that person is granted an exemption to lodging quarterly returns:
A first purchaser who buys bananas in the quarter;
A buying agent who buys bananas in the quarter;
A selling agent who sells bananas in the quarter;
A producer who sells leviable bananas other than by retail sale in the quarter.

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

Clause 27.8 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 27.9 prescribes that for people who lodge annual returns, levy 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 27.11, below).

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

Clause 27.10 specifies that the following persons who deal in leviable bananas must lodge an annual return if they are exempt from lodging quarterly returns:
A producer who sells bananas by retail sale 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 27.11 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 27.12 stipulates what information must be included in a quarterly or annual return.

The note indicates offences under section 24 of the Collection Act may be applicable if information is not provided.

Clause 27.13 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 payable in the levy year is likely to be less than $500.

Clause 27.14 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 27.15 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 27.16 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 27.17 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 27.18 stipulates what records must be kept by producers. A penalty of 10 penalty units is provided for breaches of this requirement. 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 27.19 stipulates what records must be kept by first purchasers and buying agents. A penalty of 10 penalty units is provided for breaches of this requirement. 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 27.20 stipulates what records must be kept by selling agents. A penalty of 10 penalty units is provided for breaches of this requirement. 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 27.21 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 27.15(1)(a) or 27.16(1)(a) of these Regulations.