EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 217

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

Primary Industries (Excise) Levies Act 1999
Primary Industries (Excise) Levies Amendment Regulations 2008 (No. 3)

Primary Industries Levies and Charges Collection Act 1991
Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 3)

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

The Regulations amend the arrangements for imposition and collection of the chestnuts levy, the imposition of the rubus levy and the collection of the dried vine fruit levy. The amendments do not increase the levy liability incurred by producers or the fundamental mechanisms of the levies. Some producers who previously paid levies on chestnuts or rubus may have a reduction in their liability but this will have minimal impact on total collections for each levy.

Horticulture Australia Limited (HAL) is responsible for the administration of the levies and charge schemes and for the coordination of promotion and research and development (R&D) programs for the chestnut, dried vine fruit (R&D only) and rubus industries using the funds collected through the levies and export charges. The Australian Government provides matching funds for eligible R&D expenditure under the Horticulture Marketing and Research and Development Services Act 2000.

Clause 6 of Schedule 15 to the Primary Industries (Excise) Levies Act 1999 prescribes that eligible industry bodies for leviable horticultural products may make recommendations to the Minister in relation to the relevant levy and charge regulations.

Chestnut levy and export charge
Chestnuts Australia, the eligible industry body for the chestnut industry, requested the chestnuts levy and export charge regulations be amended to exempt up to 500 kilograms per year of farm gate chestnut sales and allow for the submission of annual chestnuts levy/charge returns for levy payers who pay up to $500 in levy/charge in a levy year. Chestnuts Australia requested these amendments to reduce the incidence of low level returns and maximise the amount of levy/charge available for chestnut promotion and R&D programs following cost recovery.

The Regulations: (a) exempt chestnuts sold by a producer by retail sale (i.e. direct to the consumer such as roadside stalls, shed sales, farm gate) if the producer sells less than 500 kilograms ($50 levy equivalent) by retail sale in a levy (financial) year; and (b) provide provisions for the submission of annual returns for levy payers who are liable for less than $500 of levy/export charge, in a levy year.
Rubus levy and export charge
The Regulations clarify rubus levy exemptions applicable to processed rubus. Previously, rubus (for example, raspberries and blackberries) sold for processing was exempt from levy but rubus that was processed by the producer incurred a levy liability.

The Australian Rubus Growers Association (ARGA), the eligible industry body for the rubus industry, indicated in writing the industry’s intention to exempt all rubus directed to processing. The Regulations exempt rubus that is processed by the producer.

Dried vine fruit levy and export charge
Previously the Principal Regulations did not require a producer who had their dried vine fruit contract packed or processed prior to selling by retail sale to lodge an annual levy return. The Regulations prescribe that all producers who sell dried vine fruit by retail sale must remit annual levy and returns.

The Australian Dried Fruits Association (ADFA), the eligible industry body for the dried fruits industry, has indicated in writing the industry’s intention to require all producers who sell by retail sale to remit annual levy and returns.

Details of the Regulations are contained in the Attachment A.

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

The Office of Best Practice Regulations (OBPR) was consulted in the preparation of the Regulations. The OBPR has advised that it is not necessary to prepare a Regulation Impact Statement or Business Cost Calculator for this matter (Reference number 2008/9850).

An OBPR Preliminary Assessment was completed and is at Attachment B.

Most of the provisions in the Regulations commence on 1 November 2008. However, Schedule 2 to the Collection Regulations, which details the annual chestnuts return provisions, commences on 1 January 2009. The delayed commencement date for Schedule 2 coincides with the beginning of the next levy return quarter for ease of administration of the levy business system.
DETAILS OF THE PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2008 (No. 3)

Regulation 1 provides for the name of the Regulations to be the Primary Industries (Excise) Levies Amendment Regulations 2008 (No. 3).

Regulation 2 provides for the commencement date to be 1 November 2008.

Regulation 3 provides that Schedule 1 amends the Primary Industries (Excise) Levies Regulations 1999.

Schedule 1

Amendment to Schedule 15

Item [1] to [3], [6] to [18], [21] and [22] reworded the headings of a number of levy exemption clauses to be consistent with current legislative drafting standards.

Item [4] deleted the note to clause 6.1 which states that clause 6.2 is intentionally not used.

Item [5] inserted clause 6.2 which exempts from levy up to 500 kg of chestnuts sold by a producer by retail sale in a levy year to reduce the incidence of low level returns and maximise the amount of levy available for chestnut promotion and R&D programs following cost recovery. Item [5] also inserted notes that reference definitions of levy year and retail sale and their location within the legislation.

Item [19] inserted an additional paragraph to the rubus levy exemption clause 25.3 to exempt rubus processed by the producer. This amendment ensures consistency with the previous exemption provision that exempt rubus from levy if the fruit was sold by the producer for processing.

Item [20] renumbered the incorrectly numbered clause 24.6 to 25.6.

Amendment to Schedule 27

Item [23] reworded the heading of the queen bees levy exemption clause 5.5 to be consistent with current legislative drafting standards.
DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2008 (No. 3)

Regulation 1 provides for the name of the Regulations to be the *Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 3)*.

Regulation 2 provides for the commencement date to be 1 November 2008 for regulations 1 to 4 and Schedule 1. Regulation 2 also provides for the commencement date to be 1 January 2009 for Schedule 2.

Regulation 3 provides that Schedule 1 amends the *Primary Industries Levies and Charges Collection Regulations 1991*.

Regulation 4 provides that Schedule 2 amends the *Primary Industries Levies and Charges Collection Regulations 1991*.

Schedule 1 Amendment to Part 9 of Schedule 22

**Item [1]** amends paragraph 9.9(1)(f) to prescribe that a producer who sells dried vine fruits other than by retail sale in the month must lodge a monthly return.

**Item [2]** amends clause 9.12 to prescribe that a producer who sells dried vine fruits by retail sale in the levy year must lodge an annual return. **Item [2]** also reformatted of paragraph 9.12(b) to be consistent with current legislative drafting standards.

Schedule 2 Amendment to Schedule 22

**Item [1]** reworded apple and pear sub clause 3.15(1) of Part 3 to be consistent with current legislative drafting standards.

**Item [2]** reworded the heading of chestnuts clause 6.6 of Part 6 to be consistent with current legislative drafting standards.

**Item [3]** reworded the heading of clause 6.7 of Part 6 to prescribe who must lodge a chestnuts quarterly return. **Item [3]** also inserted an additional subclause, which deals with who must lodge a chestnuts return. The new subclause prescribes that a person is not required to lodge a quarterly chestnuts return where they have applied for an exemption from the requirement to lodge quarterly chestnuts returns which has not been refused.

**Item [3]** also reworded the heading of clause 6.8 of Part 6 to prescribe that a quarterly chestnuts return must be lodged within 28 days of the end of the quarter to which it relates.

**Item [3]** also inserted a new clause 6.8A of Part 6 to prescribe that, for persons who lodge annual chestnuts returns, the charge or levy is due for payment on the last day on which annual chestnuts returns for the levy year must be lodged.

**Item [3]** also inserted a new clause 6.8B of Part 6 to prescribe who must lodge an annual chestnuts return.
Item [3] also inserted a new clause 6.8C of Part 6 to prescribe that an annual chestnuts return must be lodged on or before 28 August in the next levy year. A levy year is the same as the financial year. Item [3] also inserted a new note after clause 6.8C of Part 6 which refers the reader to return offences prescribed within section 24 of the *Primary Industries Levies and Charges Collection Act 1991*.

**Item [4]** reworded clause 6.9 of Part 6 to prescribe what must be included in a quarterly or annual chestnuts return.

**Item [5]** inserted a new clause 6.9A to prescribe that a person may apply for an exemption from the requirement to lodge quarterly chestnuts returns if they have reasonable grounds for believing that the total amount of chestnuts charge and levy they will pay, or be likely to pay, in the levy year will not exceed $500.

Item [5] also inserted a new clause 6.9B which prescribes what information an application for exemption from the requirement to lodge quarterly chestnuts returns must include.

Item [5] also inserted a new clause 6.9C which prescribes that the Secretary of the Department of Agriculture, Fisheries and Forestry must grant or refuse an application for exemption from the requirement to lodge quarterly chestnuts returns within 14 days of receiving the application. The new clause also prescribes that, when deciding to grant or refuse an application for exemption, the Secretary must have regard to the amount of charge, levy or intermediary amount payable by the applicant for the preceding levy year and any available information about the amount of liability the applicant is likely to incur in the levy year to which the application relates.

Item [5] also inserted a new clause 6.9D which prescribes that the Secretary must decide whether to continue a person’s exemption from the requirement to lodge quarterly chestnuts returns within 14 days of receiving the person’s annual return. The new clause also prescribes that, when deciding whether to continue an exemption, the Secretary must have regard to the amount of charge, levy or intermediary amount payable by the applicant for the preceding levy year and any available information about the amount of liability the applicant is likely to incur in the next levy year.

Item [5] also inserted a new clause 6.9E which prescribes when a quarterly chestnuts return must be lodged if the exemption from the requirement to lodge quarterly chestnuts returns is refused. Item [5] also inserted a new note after clause 6.8E of Part 6 which refers the reader to return offences prescribed within section 24 of the *Primary Industries Levies and Charges Collection Act 1991*.

Item [5] also inserted a new clause 6.9F which prescribes when a quarterly chestnuts return must be lodged if the exemption from the requirement to lodge quarterly chestnuts returns is not continued. Item [5] also inserted a new note after clause 6.8F of Part 6 which refers the reader to return offences prescribed within section 24 of the *Primary Industries Levies and Charges Collection Act 1991*.

**Item [6]** reworded subclause 7.16(1) of Part 7 to be consistent with current legislative drafting standards.

**Item [7]** reformatted and reworded clause 9.15 of Part 9 to be consistent with current legislative drafting standards.
Best Practice Regulation – Preliminary Assessment

Department of Agriculture Fisheries & Forestry
Primary Industries Levies & Charges Collection Amendment Regulations

This form is designed to help you undertake a preliminary assessment of the impact of a regulatory proposal on business and individuals or the economy, and to determine what level of regulatory analysis is required. You should consult the Best Practice Regulation Handbook for a full outline of the requirements for developing regulatory proposals. All new and amending regulations and quasi-regulations, including those that impose a cost or confer a benefit, are subject to these processes.

Section 1: Business Compliance Costs

The Business Cost Calculator (BCC) Quickscan is to be used for all regulatory proposals to identify whether there will be business compliance costs. The following checklist will help you identify if there are compliance costs, and can be used as an alternative to the BCC Quickscan.

Will businesses incur costs when they are required to report certain events? ☐ Yes ☒ No
Will costs be incurred by business in keeping abreast of regulatory requirements? ☐ Yes ☒ No
Are costs incurred in seeking permission to conduct an activity? ☒ Yes ☐ No
Are businesses required to purchase materials or equipment? ☒ Yes ☐ No
Are businesses required to keep records up-to-date? ☐ Yes ☒ No
Will businesses incur costs when cooperating with audits or inspections? ☐ Yes ☒ No
Will businesses incur costs when producing documents for third parties? ☐ Yes ☒ No
Will business incur costs that are of a non-administrative nature? ☒ Yes ☐ No
Are there any other compliance costs associated with the regulatory proposal? ☐ Yes ☒ No

If you have answered no to each of these questions there would appear to be nil compliance costs and you may proceed to Section 2 on other impacts (including impacts on competition). If you answered yes to any of the questions you need to assess whether the impact on business is low, medium or significant.

Will this proposal have a low impact on business? ☒ Yes ☐ No

If you have assessed the impact on business as low you should attach an explanation of the reason for that assessment. If the impact is medium or significant you are required to estimate the compliance cost using the BCC. If the impact is medium or significant, or you are unsure, please
contact the OBPR to discuss/confirm your preliminary assessment, and whether you need to prepare a Regulation Impact Statement (RIS).

Section 2: Other impacts on business and individuals, including restrictions on competition

If a regulatory option is likely to have a significant impact on business and individuals or restricts competition you may be required to prepare a RIS. Restrictions on competition can include a limitation being placed on entry to a market, price, output or production methods. The following checklist will help you to assess whether a proposal restricts competition.

Would the regulatory proposal affect the number and range of suppliers? ☐ Yes ☒ No
For Example: Grant exclusive rights for a supplier to provide a good or service.
Establish a licence, permit or authorisation process as a requirement of operation.
Affect the ability of some types of firms to participate in public procurement.
Significantly alter costs of entry or exit to a supplier.
Create geographic barriers for businesses.

Would the regulatory proposal change the ability of suppliers to compete? ☐ Yes ☒ No
For Example: Control or substantially influence the price at which a good or service is sold.
Alter the ability of suppliers to advertise or market their products.
Set standards for product/service quality that are significantly different from current.
Significantly alter costs for some suppliers relative to others.

Would the regulatory proposal alter suppliers’ incentives to compete vigorously? ☐ Yes ☒ No
For Example: Create a self-regulatory or co-regulatory regime.
Impact on the mobility of customers between suppliers.
Require/encourage the publishing of data on company outputs/price, sales/cost.
Exempt an activity from general competition law.

If you tick yes to any of these boxes contact the OBPR to determine whether a RIS is required. If there are other impacts on business and individuals which may be significant you should seek advice from the OBPR.

Further action

This form and any supporting documents, including a brief outline of the proposal to which it relates, should be kept on file and copied to the person in your department/agency responsible for coordinating matters relating to best practice regulation.

Erin Payne
23 September 2008
**Assessment explanation**

The Regulations amend the imposition and collection of the chestnuts levy, the imposition of the rubus levy and the collection of the dried vine fruit levy. The amendments do not increase the levy liability incurred by producers or the fundamental mechanisms of the levies. Some producers who previously paid levies on chestnuts or rubus may have a reduction in their liability but this will have minimal impact on total collections for each levy.

**Chestnut levy and export charge**

Amendments to the chestnuts levy and export charge legislation exempt chestnuts sold by a producer by retail sale (i.e. direct to the consumer such as roadside stalls, shed sales, farm gate) if the producer sells less than 500 kilograms ($50 levy equivalent) by retail sale in a levy (financial) year and insert provisions to allow for the submission of annual returns for levy payers who are liable for less than $500 of levy/export charge, in a levy year.

Chestnuts Australia, the peak industry representative body for the chestnut industry, requested these amendments to reduce the incidence of low level returns and maximise the amount of levy/charge available following cost recovery for chestnut promotion and research and development programs.

**Rubus levy**

Amendment to the rubus levy legislation was required to clarify exemptions applicable to processed rubus. Previously rubus sold for processing was exempt from levy. However this was inconsistent with the rubus levy imposition legislation where levy was imposed on producers who process their own rubus.

The Australian Rubus Growers Association (ARGA), the peak industry representative body for the rubus industry, indicated in writing the industry’s intention to exempt all rubus directed to processing. The amendment to the Regulations exempts rubus that is processed by the producer.

**Dried vine fruit levy**

Amendment to the dried vine fruit (DVF) levy legislation was required to ensure the collection of the dried vine fruit levy.

Instances occur within the dried vine fruit industry where producers have their DVF packed or processed under contract, after which they may sell their DVF by retail sale.

Previously the Collection Regulations did not provide for the situation where a producer sold contract packed or processed DVF by retail sale. The amendment to the Regulations prescribes all producers who sell DVF by retail sale to remit levy and returns.

The Australian Dried Fruits Association provided its written support to this proposal.