EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 75

Issued by the Authority of 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 2009 (No. 2)
Primary Industries (Customs) Charges Amendment Regulations 2009 (No. 1)
Primary Industries Levies and Charges Collection Amendment Regulations 2009 (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 introduce new Commonwealth statutory excise levies and export charges on pineapple growers for the purpose of undertaking marketing and research and development (R&D) through Horticulture Australia Limited (HAL) as well as to pay for Plant Health Australia (PHA) membership and establish an Emergency Plant Pest Response (EPPR) levy and charge.

The R&D and PHA levies would be on pineapples sold either on the fresh market or directed to processing while the marketing levy would be on fresh sales only. The emergency plant pest response levy would initially be set at zero and would only be activated if a pest or disease outbreak occurs. The export charge would be implemented only on fresh sales.

Currently, there are no Commonwealth levies on pineapples. The levies and export charges would be collected at the first point of sale on all varieties of pineapples of any species of the genus ‘Ananas’. Where a grower sells 30 tonnes or less of fresh pineapple to the public through retail sale (that is, direct to the consumer through roadside stalls, shed sales, farmgate etc) in a levy year, that grower’s fruit would be exempt from levy.

The statutory levies and export charges on pineapple growers are to be set at the following rates:

For pineapples directed to processing
- Research and Development: $1.90 per tonne
- Plant Health Australia membership: $0.10 per tonne
- Emergency Plant Pest Response: zero

For pineapples sold on the fresh market
- Marketing and Promotion: $2.00 per tonne
- Research and Development: $2.90 per tonne
- Plant Health Australia membership: $0.10 per tonne
- Emergency Plant Pest Response: zero
The pineapple levy and export charge is expected to raise $320,000 annually: $60,000 for marketing; $248,500 for R&D; and $11,500 for the PHA membership fee. Excess funds above the annual PHA membership fee can be redirected to HAL for R&D. After deducting levy collection costs and the HAL administrative fee it is expected there would be approximately $415,000 available annually for expenditure on R&D (including $207,500 in government matching funds).

HAL is the relevant industry services body for the administration of the pineapple industry levies and charges for marketing and R&D and would be the body to manage moneys collected from these levies and charges imposed on pineapple 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*.

PHA is responsible for coordinating national plant health matters. A broad cross section of plant industry bodies together with the Australian Government and all state and territory governments are members of PHA. The *Plant Health Australia (Plant Industries) Funding Act 2002* provides for the disbursement to PHA of levies and export charges collected from producers. The levy and export charge payable by pineapple growers to PHA pays for Growcom’s annual membership of PHA. Levies and export charges payable to HAL and PHA are collected together. Any excess PHA levy and export charge collected from pineapple growers above the Growcom annual membership fee is forwarded to HAL for expenditure on pineapple R&D.

The *Government and Plant Industry Cost Sharing Deed in Respect of Emergency Plant Pest Responses* – also referred to as the Emergency Plant Pest Response Deed (EPPRD), commenced on 26 October 2005. The parties to the EPPRD are the members of PHA. Under the EPPRD, the Australian Government, the state and territory governments and affected plant industry members will share the eligible costs incurred in responding to emergency plant pests and diseases. The Australian Government has agreed to underwrite industry liabilities under the EPPRD and for statutory EPPR levies and charges to be established to facilitate industry repayment of underwritten amounts.

*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 4(4) of Schedule 15 to the Levies Act provides that regulations may fix rates of levy for other 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(11) of Schedule 15 to the Levies Act provides that before the Governor-General makes regulations to fix rates of levy for other purposes, the Minister must take into consideration any relevant recommendations made to the Minister by the eligible industry body.

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 Growcom as the eligible industry body with which HAL must consult in relation to pineapples. HAL recommended the initial operative rates of levy to the Minister for Agriculture, Fisheries and Forestry after consultation with Growcom. The Regulations give effect to the recommendations of HAL, which are consistent with the pineapple 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 3(10) of Schedule 10 to the Charges Act provides that regulations may fix rates of export charge for other 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(10) of Schedule 10 to the Charges Act provides that before the Governor-General makes regulations to fix rates of export charge for other purposes, the Minister must take into consideration any relevant recommendations made to the Minister by the eligible industry body.

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 Growcom as the eligible industry body with which HAL must consult in relation to pineapples. HAL recommended the initial operative rates of export charge to the Minister for Agriculture, Fisheries and Forestry after consultation with Growcom. The Regulations give effect to the recommendations of HAL, which are consistent with the pineapple 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 and chargeable horticultural products.

Growcom undertook an extensive consultation and ballot process. The ballot was conducted by the Australian Electoral Commission with 155 ballot papers distributed to prospective levy payers. The ballot delivered a positive result in favour of the levy and charge proposal. 75.5 per cent of growers chose to vote and the following results were achieved: 76 per cent in favour of the processing R&D levy; 72 per cent in favour of the fresh R&D levy and charge; 60 per cent in favour of the fresh marketing levy and charge; and 74.5 per cent in favour of the PHA membership and EPPR levies and charges.

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 was consulted in the preparation of the Regulations. A Regulation Impact Statement is attached, as an Annex.

The Regulations commence on 1 July 2009, the start date requested by Growcom.
DETAILS OF THE PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2009 (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 2009 (No. 2).

Regulation 2 – Commencement

This regulation provides for the commencement date to be 1 July 2009.

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 28.1 provides that pineapples 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.

Clause 28.2 specifies that pineapples sold by a producer by retail sale are exempt from levy if the producer would sell not more than 30 tonnes of fresh pineapple to the public through retail sale in a levy year.

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

Clause 28.3 sets an initial operative rate of marketing levy destined for Horticulture Australia Limited for pineapples sold on the fresh market of $2.00 per tonne of fresh pineapples.

Clause 28.4 sets initial operative rates of R&D levy destined for Horticulture Australia Limited: for pineapples sold on the fresh market of $2.90 per tonne of fresh pineapples; and for pineapples sold to a processor of $1.90 per tonne of processing pineapples.

The note provides that “fresh pineapples” and “processing pineapples” are defined in the Primary Industries Levies and Charges Collection Regulations 1991.

Clause 28.5 provides that Growcom (ABN 51 090 816 827) is the eligible industry body for pineapples.
Clause 28.6 sets initial operative rates of levy destined for Plant Health Australia Limited: for pineapples sold on the fresh market of $0.10 per tonne of fresh pineapples; and for pineapples sold to a processor of $0.10 per tonne of processing pineapples. The levy is payable by the producer of the pineapples.

- The note provides a cross-reference to the Plant Health Australia (Plant Industries) Funding Act 2002.

Clause 28.7 sets an initial operative rate of Emergency Plant Pest Response levy on pineapples of zero. The levy is payable by the producer of the pineapples.

- Note 1 provides a cross-reference to the Plant Health Australia (Plant Industries) Funding Act 2002.
- Note 2 provides that “fresh pineapples”, “pineapples” “processing pineapples” and other expressions used are defined in the Primary Industries Levies and Charges Collection Regulations 1991.

DETAILS OF THE PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT REGULATIONS 2009 (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 2009 (No. 1).

Regulation 2 – Commencement

This Regulation provides for the commencement date to be 1 July 2009.

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 and reserves for future use a new Part 27 about bananas into Schedule 10 to the Customs Charges Regulations. The item also inserts a new Part 28 about pineapples into Schedule 10 to the Customs Charges Regulations, including a new Division 28.1 Product charge and a new Division 28.2 Special purpose charges.

Clause 28.1 provides that pineapples are a chargeable horticultural product for the purposes of the definition in clause 1 of Schedule 10 to the Primary Industries (Customs) Charges Act 1999.

- Note 1 indicates that charge is not imposed on horticultural products that are exported from Australia if a levy on that product has already been paid.
- Note 2 indicates that Clause 28.2 is reserved for future use.

Clause 28.3 sets an initial operative rate of marketing charge destined for Horticulture Australia Limited for pineapples sold on the fresh export market of $2.00 per tonne of pineapples.
Clause 28.4 sets an initial operative rate of R&D charge destined for Horticulture Australia Limited for pineapples sold on the fresh export market of $2.90 per tonne of pineapples.

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

Clause 28.5 provides that Growcom (ABN 51 090 816 827) is the eligible industry body for pineapples.

Clause 28.6 sets an initial operative rate of charge destined for Plant Health Australia Limited for pineapples sold on the fresh export market of $0.10 per tonne of pineapples. The charge is payable by the producer of the pineapples.

- The note provides a cross-reference to the *Plant Health Australia (Plant Industries) Funding Act 2002*.

Clause 28.7 sets an initial operative rate of Emergency Plant Pest Response charge on fresh pineapples sold on the fresh export market of zero. The charge is payable by the producer of the pineapples.

- Note 1 provides a cross-reference to the *Plant Health Australia (Plant Industries) Funding Act 2002*.
- Note 2 provides that “pineapple” and other expressions used are defined in the *Primary Industries Levies and Charges Collection Regulations 1991*.

**DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2009 (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 2009 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the commencement date to be 1 July 2009.

**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**


Clause 28.1 provides that the Part applies to pineapples.

Clause 28.2 provides definitions for use in the Part. The definitions are for “chargeable pineapples”, “deal”, “exporter”, “fresh pineapples”, “leviable pineapples”, “pineapple”, “processing pineapples”, “retail sale”, “detopping” and “crown”. The note under detopping provides further definition of crown.
Note 1 provides a cross-reference to pineapples being a chargeable horticultural product.
Note 2 provides a cross-reference to pineapples being a leviable horticultural product.

Clause 28.3 provides that a levy year for pineapples is a financial year.

Clause 28.4 prescribes operations (fruit conditioning operations, cleaning, sorting, grading, packing and detopping) that are not considered processes for pineapples sold or used by a producer for processing.
- The note provides a definition of process and explains that certain operations that are not considered a process can be prescribed.

Clause 28.5 defines who is a processor of pineapples.
- The 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 28.6 prescribes pineapples for the purpose of paragraph 7(2)(b) of the Collection Act in relation to the liability of processors.
- The note indicates that processors are liable to pay, on behalf of producers, any unpaid levy and/or late payment penalty.

Clause 28.7 prescribes pineapples for the purpose of paragraph 7(3) of the Collection Act in relation to the liability of exporters.
- The note indicates that exporters are liable to pay, on behalf of producers, any unpaid levy and/or late payment penalty.

Clause 28.8 prescribes pineapples 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 Collection Act).
- Note 2 identifies the person who exports chargeable horticultural products, in this case pineapples, from Australia as a producer.

Clause 28.9 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 28.11, below).
- The note indicates penalties can be imposed under section 15 of the Collection Act for late payment.

Clause 28.10 prescribes that the following persons who deal in leviable or chargeable pineapples 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 pineapples in the quarter;
A buying agent who buys pineapples in the quarter;
A selling agent who sells pineapples in the quarter;
An exporting agent who exports pineapples in the quarter;
An exporting agent who exports pineapples in the quarter;
A processor who processes pineapples in the quarter;
A producer who sells leviable pineapples 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 28.11 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 28.12 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 28.14, below).
  · The note indicates penalties can be imposed under section 15 of the Collection Act for late payment.

Clause 28.13 specifies that the following persons who deal in leviable or chargeable pineapples must lodge an annual return if they are exempt from lodging quarterly returns:
  A producer who sells leviable pineapples by retail sale in the levy year;
  A person who deals with leviable or chargeable pineapples 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 28.14 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 28.15 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 28.16 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/or charge payable in the levy year is likely to be less than $500.

Clause 28.17 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 28.18 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 28.19 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 28.20 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 28.21 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.
  · Note 1 provides a cross-reference to the definition of strict liability.
  · Note 2 provides a cross-reference to offences in relation to how long records must be kept.
Clause 28.22 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.

- Note 1 provides a cross-reference to the definition of strict liability.
- Note 2 provides a cross-reference to offences in relation to how long records must be kept.

Clause 28.23 stipulates what records must be kept by exporters and exporting 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.

- Note 1 provides a cross-reference to the definition of strict liability.
- Note 2 provides a cross-reference to offences in relation to how long records must be kept.

Clause 28.24 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.

- Note 1 provides a cross-reference to the definition of strict liability.
- Note 2 provides a cross-reference to offences in relation to how long records must be kept.

Clause 28.25 stipulates what records must be kept by processors. A penalty of 10 penalty units is provided for breaches of this requirement. An offence under this clause is an offence of strict liability.

- Note 1 provides a cross-reference to the definition of strict liability.
- Note 2 provides a cross-reference to offences in relation to how long records must be kept.

Clause 28.26 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 28.18(1)(a) or 28.19(1)(a) of these Regulations.