Primary Industries Levies and Charges Collection Amendment Regulations 2009 (No. 1)

Select Legislative Instrument 2009 No. 76

I, QUENTIN BRYCE, 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 14 May 2009

QUENTIN BRYCE
Governor-General

By Her 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 2009 (No. 1)*.

2 Commencement
These Regulations commence on 1 July 2009.

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 27
*insert*

Part 28 Pineapples

28.1 Application
This Part applies to pineapples.

28.2 Definitions for Part 28
In this Part:
*chargeable pineapples* means pineapples on the export of which charge is imposed.
*crown* means the short leafy stem that grows from one end of a pineapple.
*deal* means sell, buy, process or export.
**detopping** means removing the crown of a pineapple.

*Note*  The crown is also known and referred to as ‘the top’.

**exporter**, for chargeable pineapples, means the producer of the pineapples within the meaning of paragraph (g) of the definition of **producer** in subsection 4 (1) of the Collection Act.

*Note*  Paragraph (g) of the definition of **producer** in subsection 4 (1) of the Collection Act provides that, for chargeable horticultural products on which charge is imposed, **producer** means the person who exports the product from Australia.

**fresh pineapples** means pineapples other than processing pineapples.

**leviable pineapples** means pineapples on which levy is imposed.

**pineapple** means a fruit of any species of the genus Ananas.

**processing pineapples** means pineapples:
(a) sold by the producer to a first purchaser, or sold through a buying agent or a selling agent, for use in the production of a processed product in Australia; or
(b) used by the producer in the production of a processed product.

**retail sale**, for a sale of pineapples by a producer, means a sale by the producer of the product except a sale:
(a) to a first purchaser; or
(b) through a selling agent, a buying agent or an exporting agent; or
(c) at a wholesale produce market.

*Note 1*  Pineapples are chargeable horticultural products — see Part 28 of Schedule 10 to the Customs Charges Regulations.

*Note 2*  Pineapples are leviable horticultural products — see Part 28 of Schedule 15 to the Excise Levies Regulations.

### 28.3 What is a levy year

For the definition of **levy year** in subsection 4 (1) of the Collection Act, a levy year for pineapples is a financial year.
28.4 What is not a process

For the definition of *process* in subsection 4 (1) of the Collection Act, the following operations are prescribed for pineapples:

(a) fruit conditioning operations, including storage and ripening;
(b) cleaning;
(c) sorting;
(d) grading;
(e) packing;
(f) detopping.

*Note* The definition of *process*, in relation to a collection product, means the performance of any operation in relation to the product but does not include the performance of an operation prescribed for the purposes of the definition, either generally or in relation to the produce.

28.5 Who is a processor

Pineapples are declared to be a product to which paragraph (b) of the definition of *processor* in subsection 4 (1) of the Collection Act applies.

*Note* Paragraph (b) of the definition of *processor* in subsection 4 (1) of the Collection Act provides that, in relation to a collection product declared by the regulations to be a product to which that paragraph applies, *processor* means the proprietor of the processing establishment that process the product unless, immediately prior to delivery to that establishment, the product is owned by the proprietor of another processing establishment, in which case *processor* means the proprietor of that other establishment.

28.6 Liability of intermediaries — processors

Pineapples are declared to be a product to which paragraph 7 (2) (b) of the Collection Act applies.

*Note* Paragraph 7 (2) (b) of the Collection Act provides that a processor who processes a product on or in relation to which levy is imposed, being a product, declared by the regulations to be a product to which this paragraph applies, is liable to pay, on behalf of the producer, any levy due for payment on or in relation to the product that remains unpaid by the producer, and any penalty for late payment imposed by subsection 15 (1) of the Collection Act.
28.7 **Liability of intermediaries — exporting agents**

For subsection 7 (3) of the Collection Act, pineapples are prescribed.

*Note* Subsection 7 (3) of the Collection Act provides that an exporting agent who exports prescribed products on which charge is imposed is liable to pay, on behalf of the producer, the amount of any charge due for payment on or in relation to the products that remains unpaid by the producer, and any penalty imposed under subsection 15 (1) of the Collection Act in relation to that charge.

28.8 **Who is a producer**

For paragraph (b) of the definition of *producer* in subsection 4 (1) of the Collection Act, pineapples are prescribed.

*Note 1* 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.

*Note 2* Paragraph (g) of the definition of *producer* in subsection 4 (1) of the Collection Act provides that, for chargeable horticultural products on which charge is imposed, *producer* means the person who exports the product from Australia.

28.9 **When is charge or levy due for payment — people who lodge quarterly returns**

For section 6 of the Collection Act, charge or levy payable on pineapples for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 28.11.

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

28.10 **Who must lodge a quarterly return**

1. The following persons must lodge a return for a quarter:
   
(a) a first purchaser who buys pineapples in the quarter;
(b) a buying agent who buys pineapples in the quarter;
(c) a selling agent who sells pineapples in the quarter;
(d) an exporter who exports pineapples in the quarter;
(e) an exporting agent who exports pineapples in the quarter;
(f) a processor who processes pineapples in the quarter;
(g) a producer who sells pineapples other than by retail sale in the quarter.

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

(2) However, the person does not have to lodge a quarterly return in a levy year if:
(a) the person has applied under clause 28.16 for an exemption for the levy year and has not received notice of the Secretary’s decision; or
(b) the Secretary has granted the person an exemption for that levy year under paragraph 28.18 (1) (a) or has continued the person’s exemption under paragraph 28.19 (1) (a); or
(c) the Secretary is required under paragraph 28.19 (1) (a) to decide whether to continue the person’s exemption and the person has not received notice of the Secretary’s decision.

28.11 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.

28.12 When is charge or levy due for payment — people who lodge annual returns

For section 6 of the Collection Act, charge or levy payable on pineapples for a levy year is due for payment on 28 August in the following year.

Note For penalty for late payment, see section 15 of the Collection Act.
28.13 **Who must lodge an annual return**

The following persons must lodge a return for a levy year:

(a) a producer who sells leviable pineapples by retail sale in the levy year;

(b) a person who deals with leviable or chargeable pineapples in the levy year and is exempt from lodging quarterly returns for the levy year.

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

28.14 **When must an annual return be lodged**

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

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

28.15 **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, in respect of the quarter or levy year, for pineapples dealt with by the person lodging the return for which charge or levy is payable:

(a) the quantity of each class of pineapples dealt with by the person; and

(b) the amount of levy or charge payable for the pineapples; and

(c) the amount of levy or charge paid by that person for the pineapples.

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

28.16 **Exemption from lodging quarterly returns**

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

(1) An application for exemption from the requirement to lodge quarterly returns for a levy year 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 or charge on pineapples for the levy year; or
       
       (ii) the applicant is, or may become, liable to pay an amount under subsection 7 (1), (2) or (3) of the Collection Act, in relation to pineapples, for the levy year; and

   (c) a statement by the applicant that the applicant believes that the sum of levy or charge on pineapples 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.

28.18 **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 the exemption, the Secretary must have regard to:

   (a) the amount of levy or charge payable, or the amount payable by the applicant under subsection 7 (1), (2) or (3) of the Collection Act, for the previous levy year; and

   (b) any information that is available to the Secretary about the amount of the liability that the applicant is likely to incur in the levy year to which the application relates.
28.19 Continuation of exemption

(1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for that levy year, the Secretary must, within 14 days after receiving the return:
   (a) decide whether to continue the exemption for the following levy year; and
   (b) give the person written notice of the decision.

(2) When deciding whether to continue a person’s exemption, the Secretary must have regard to:
   (a) the amount of levy or export charge payable by the person, or the amount of the person’s liability under subsection 7 (1), (2) or (3) of the Collection Act, in the previous year; and
   (b) any information that is available to the Secretary about the amount of the liability that the person is likely to incur in the following levy year.

28.20 When must quarterly returns be lodged if exemption refused or not continued

A person who receives notice of a refusal to grant, or of a refusal to continue, an exemption for a levy year must lodge a return for each quarter of 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 to which the return relates.

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

28.21 What records must be kept — producers

(1) A producer must keep records showing, in respect of a quarter or levy year, as required:
   (a) the quantity of leviable pineapples dealt with by the producer in the quarter; and
   (b) the amount of levy payable on the pineapples; and
(c) the amount of levy paid by the producer for the pineapples.

Penalty: 10 penalty units.

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

Note 1 For strict liability, see section 6.1 of the Criminal Code.

Note 2 For offences in relation to how long records must be kept, see regulation 12.

28.22 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 each quarter:

(a) the quantity of pineapples bought by the first purchaser or buying agent in the quarter; and
(b) the amount of levy payable on the pineapples; and
(c) the amount of levy paid by the first purchaser or buying agent for the pineapples.

Penalty: 10 penalty units.

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

Note 1 For strict liability, see section 6.1 of the Criminal Code.

Note 2 For offences in relation to how long records must be kept, see regulation 12.

28.23 What records must be kept — exporters and exporting agents

(1) An exporter or exporting agent must keep records showing, in respect of each quarter:

(a) the quantity of pineapples exported by the exporter or agent; and
(b) the amount of charge payable on the pineapples; and
(c) the amount of charge paid by the exporter or agent for the pineapples.

Penalty: 10 penalty units.
(2) An offence against subclause (1) is an offence of strict liability.

Note 1 For strict liability, see section 6.1 of the Criminal Code.

Note 2 For offences in relation to how long records must be kept, see regulation 12.

28.24 What records must be kept — selling agents

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

(a) the quantity of fresh pineapples and processing pineapples sold by the selling agent; and
(b) the amount of levy payable on fresh pineapples and processing pineapples; and
(c) the amount of levy paid by the selling agent for fresh pineapples and processing pineapples.

Penalty: 10 penalty units.

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

Note 1 For strict liability, see section 6.1 of the Criminal Code.

Note 2 For offences in relation to how long records must be kept, see regulation 12.

28.25 What records must be kept — processors

(1) A processor must keep records showing, in respect of each quarter:

(a) the quantity of pineapples dealt with by the processor; and
(b) the amount of levy payable on the pineapples; and
(c) the amount of levy paid by the processor for the pineapples; and
(d) the quantity of pineapples bought by the processor.

Penalty: 10 penalty units.

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

Note 1 For strict liability, see section 6.1 of the Criminal Code.

Note 2 For offences in relation to how long records must be kept, see regulation 12.
28.26 **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 28.18 (1) (a); or

(b) refusing to continue an exemption under paragraph 28.19 (1) (a).

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**Note**