EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 94

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 2010 (No. 2)
Primary Industries (Customs) Charges Amendment Regulations 2010 (No. 1)
Primary Industries Levies and Charges Collection Amendment Regulations 2010 (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 implement a proposal by the Australian Passionfruit Industry Association (APIA) to:

• introduce a new Australian Government (Government) statutory excise levy and export charge on passionfruit growers for the purpose of undertaking marketing through Horticulture Australia Limited (HAL); and

• change certain aspects of the levy collection mechanism which are of a machinery nature in order to reduce collection costs.

Since 1 May 1999 a statutory research and development (R&D) levy and export charge on passionfruit growers has been paid to HAL. The R&D levy is imposed on sales on the fresh domestic and export markets and on product directed to processing.

HAL is the relevant industry services body for the administration of horticulture industry levies and charges for marketing and R&D and would be the body to manage moneys collected from the marketing levy and charge imposed on passionfruit 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 Government matching funding for eligible R&D expenditure. This matching funding is provided under the Horticultural Marketing and Research and Development Services Act 2000.

The proposed passionfruit marketing levy and charge rates are set at the same rates as for the current R&D levy and charge, namely:

• 20 cents per 18 litre carton;
• 20 cents per eight kilograms, if not packed in cartons; and
• 1.5 cents per kilogram of processing passionfruit.
The proposed marketing levy and charge would double the amount of money payable by growers. Like the R&D levy and charge, the proposed marketing levy and charge would be collected at the first point of sale.

The following ‘machinery’ changes to the collection arrangements are proposed to reduce collection costs.

- An exemption from payment for passionfruit sold by a producer by retail sale (i.e. direct to the consumer via roadside stalls, shed sales, farm gate, etc) if the total amount of levy that the producer would be liable to pay in the levy year would be less than $100. This exemption is to apply to the combined R&D and marketing levies.
- Currently collection agents are able to submit quarterly returns, but APIA want provision to be made for the submission of annual returns where the total liability of levy and/or charge payable on passionfruit dealt with in the levy year will be less than $500. This provision is to apply to the combined R&D and marketing levies and charges.

The passionfruit R&D levy and charge raised $69,000 in 2008-09. Funds expected to be generated from the proposed marketing levy and charge would be $60,000 to $80,000 depending on seasonal conditions. The Government provides matching funds for eligible R&D expenditure but does not match funds utilised for marketing.

**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 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 for Agriculture, Fisheries and Forestry (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(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 APIA as the eligible industry body with which HAL must consult in relation to passionfruit. HAL recommended the initial operative rates of marketing levy to the Minister after consultation with APIA. The Regulations give effect to the recommendations of HAL, which are consistent with the passionfruit 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 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(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(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 APIA as the eligible industry body with which HAL must consult in relation to passionfruit. HAL recommended the initial operative rates of marketing export charge to the Minister after consultation with APIA. The Regulations give effect to the recommendations of HAL, which are consistent with the passionfruit 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.

The Collection Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

APIA undertook an extensive consultation and ballot process. The ballot was conducted by the Australian Electoral Commission. Ballot papers were sent to 130 known commercial growers and 60 valid papers were returned. The result of the vote was 38 growers in favour of the marketing levy and charge proposal and 22 growers against.

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 2010.
DETAILS OF THE PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2010 (No. 2)

Regulation 1 – Name of Regulations

This regulation would provide for the name of the Regulations to be the Primary Industries (Excise) Levies Amendment Regulations 2010 (No. 2).

Regulation 2 – Commencement

This regulation would provide for the commencement date to be 1 July 2010.

Regulation 3 – Amendment of Primary Industries (Excise) Levies Regulations 1999

This regulation would provide that Schedule 1 amends the Primary Industries (Excise) Levies Regulations 1999 (the Excise Levies Regulations).

Schedule 1 Amendments

Item [1] – would delete the note at clause 13.1. The note refers to clauses 13.2 and 13.3 being intentionally not used. The note would be replaced by new clauses 13.2 and 13.3.


New clause 13.2 would specify that passionfruit 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 “levy year” and “retail sale” are defined in Schedule 22, Part 13 of the Primary Industries Levies and Charges Collection Regulations 1991.

New clause 13.3 would set an initial operative rate of marketing levy destined for Horticulture Australia Limited for passionfruit of

- 20 cents per 18 litre carton;
- 20 cents per eight kilograms, if not packed in cartons; and
- 1.5 cents per kilogram of processing passionfruit.

The note provides that “carton” is defined in Schedule 22, Part 13 of the Primary Industries Levies and Charges Collection Regulations 1991.

Item [3] – would express in clause 13.4(c) the operative rate of research and development levy for processing passionfruit destined for Horticulture Australia Limited as 1.5 cents per kilogram rather than as $15 per tonne, to be consistent with clause 13.3. This would not change the amount of levy that a producer is liable to pay.
DETAILS OF THE PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT REGULATIONS 2010 (No. 1)

Regulation 1 – Name of Regulations
This Regulation would provide for the name of the Regulations to be the Primary Industries (Customs) Charges Amendment Regulations 2010 (No. 1).

Regulation 2 – Commencement
This regulation would provide for the commencement date to be 1 July 2010.

Regulation 3 – Amendment of Primary Industries (Customs) Charges Amendment Regulations 2000
This regulation would provide that Schedule 1 amends the Primary Industries (Customs) Charges Regulations 2000 (the Customs Charges Regulations).

Schedule 1 Amendments

Item [1] – would replace the note at clause 13.1 with a new note which indicates that Clause 13.2 is intentionally not currently used.

Item [2] – would insert a new clause 13.3 which would set an initial operative rate of marketing charge destined for Horticulture Australia Limited for passionfruit sold on the fresh export market of
• 20 cents per 18 litre carton;
• 20 cents per eight kilograms, if not packed in cartons; and
• 1.5 cents per kilogram of processing passionfruit.
  The note provides that “carton” is defined in Schedule 22, Part 13 of the Primary Industries Levies and Charges Collection Regulations 1991.

Item [3] – would express in clause 13.4(b) the operative rate of research and development charge for processing passionfruit destined for Horticulture Australia Limited as 1.5 cents per kilogram rather than as $15 per tonne, to be consistent with clause 13.3. This would not change the amount of charge that a producer is liable to pay.

DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT REGULATIONS 2010 (No. 1)

Regulation 1 – Name of Regulations
This regulation would provide for the name of the Regulations to be the Primary Industries Levies and Charges Collection Amendment Regulations 2010 (No. 1).

Regulation 2 – Commencement
This regulation would provide for the commencement date to be 1 July 2010.

Regulation 3 – Amendment of Primary Industries Levies and Charges Collection Regulations 1991
This regulation would provide that Schedule 1 amends the Primary Industries Levies and Charges Collection Regulations 1991 (the Collection Regulations).
Schedule 1 Amendments

Item [1] – would substitute a new clause 13.8 which currently prescribes when a quarterly charge or levy is due for payment. The insertion of new clause 13.10A which would prescribe when charge or levy is due for payment for people who lodge annual returns, requires a new clause 13.8 which would prescribe when charge or levy is due for payment for people who would continue to lodge quarterly returns. 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 13.10).

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

Item [2] – would substitute a new clause 13.9 which would prescribe that the following persons who deal in leviable or chargeable passionfruit in a quarter must lodge a return for a quarter, unless that person is granted an exemption from lodging quarterly returns:
• a producer who sells leviable passionfruit other than by retail sale in the quarter;
• a first purchaser who buys passionfruit in the quarter;
• a buying agent who buys passionfruit in the quarter;
• a selling agent who sells passionfruit in the quarter;
• an exporter who exports passionfruit in the quarter;
• an exporting agent who exports passionfruit in the quarter; and
• a processor who processes passionfruit in the quarter.

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

Item [3] – would substitute a new heading for clause 13.10 which prescribes when a quarterly return must be lodged. The insertion of new clause 13.10C which would prescribe when an annual return must be lodged requires a change in the heading for clause 13.10 from “When a return must be lodged” to “When a quarterly return must be lodged”. For people who continue to lodge quarterly returns, a return must be lodged within 28 days after the end of the quarter to which it relates.


New clause 13.10A would prescribe 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 13.10C).

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

New clause 13.10B would specify that the following persons who deal in leviable or chargeable passionfruit must lodge an annual return:
• a producer who sells leviable passionfruit by retail sale in the levy year; and
• a person who deals with leviable or chargeable passionfruit in the levy year and is exempt from lodging quarterly returns.

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

New clause 13.10C would prescribe 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.
Item [5] – would twice insert in clause 13.11 the words “or levy year”. Currently clause 13.11 stipulates what information must be included in a quarterly return. The insertion of new clause 13.10B which would stipulate what persons must lodge an annual return, requires a change to clause 13.11 to stipulate what information must be included in an annual return, where exemption has been granted to lodge a quarterly return. The clause continues to stipulate what information must be included in a quarterly return for those persons who lodge a return for a quarter.

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

Item [6] – would substitute a reference to new subclause 13.9(1) for the reference to clause 13.9 in subclause 13.12(1). Currently subclause 13.12(1) stipulates what records must be kept for inclusion in a quarterly return. The insertion of new clause 13.10B requires a change to subclause 13.12(1) because under new subclause 13.9(2) persons may be granted an exemption from lodging quarterly returns. New subclause 13.12(1) would prescribe what records must be kept by those persons prescribed in new subclause 13.9(1) who must lodge a quarterly return.

Item [7] – would insert a new subclause 13.12(1A) which would stipulate what records must be kept by persons who lodge an annual return.

Item [8] – would substitute a reference to paragraph (1)(f) or (1A)(f) for the reference to paragraph (1)(f) in subclause 13.12(2) to stipulate details of buyers and sellers of passionfruit in the lodgement of quarterly or annual returns.

Item [9] – would substitute a reference to subclause (1) or (1A) for the reference to subclause (1) in subclause 13.12(3) to stipulate an offence not to keep the stipulated records for the lodgement of quarterly or annual returns is an offence of strict liability.


New clause 13.13 would specify 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.

New clause 13.14 would specify 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.

New clause 13.15 would stipulate 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.

New clause 13.16 would stipulate what conditions apply for continuing an exemption from lodging a quarterly return. The applicant is to be given written notice of the decision.

New clause 13.17 would stipulate 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.

New clause 13.18 would stipulate 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 13.15(1)(a) or 13.16(1)(a) of the Collection Regulations.