Primary Industries Levies and Charges Collection Amendment Regulations 2010 (No. 1)

Select Legislative Instrument 2010 No. 94

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 20 May 2010

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 2010 (No. 1)*.

2 **Commencement**

These Regulations commence on 1 July 2010.

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 Amendments**

(regulation 3)

[1] **Schedule 22, clause 13.8**

*substitute*

13.8 **When charge or levy is due for payment — persons who lodge quarterly returns**

For section 6 of the Collection Act, charge or levy payable on passionfruit for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 13.10.

*Note* For penalty for late payment, see section 15 of the Collection Act.
Schedule 22, clause 13.9

substitute

13.9 Persons who must lodge a quarterly return

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

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

2. However, a person does not have to lodge a quarterly return in the levy year if any of the following paragraphs apply:
   (a) the person:
      (i) has applied under clause 13.13 for an exemption for the levy year; and
      (ii) has not received notice of the Secretary’s decision;
   (b) the Secretary:
      (i) has granted to the person an exemption for that levy year under paragraph 13.15 (1) (a); or
      (ii) has continued the person’s exemption under paragraph 13.16 (1) (a);
   (c) the Secretary is required under paragraph 13.16 (1) (a) to decide whether to continue the person’s exemption and the person has not received notice of the Secretary’s decision.

Schedule 22, clause 13.10, heading

substitute

13.10 When a quarterly return must be lodged
Schedule 22, after clause 13.10

insert

13.10A When charge or levy is due for payment — persons who lodge annual returns

For section 6 of the Collection Act, charge or levy payable on passionfruit 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.

13.10B Persons who must lodge an annual return

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

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

(b) a person who:

(i) deals with leviable passionfruit in the levy year; and

(ii) is exempt from lodging quarterly returns for the levy year;

(c) a person who:

(i) deals with chargeable passionfruit in the levy year; and

(ii) is exempt from lodging quarterly returns for the levy year.

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

13.10C When an annual return must 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.
[5] Schedule 22, clause 13.11

omit
a return for a quarter must state, in respect of the quarter

insert
a return for a quarter or levy year must state, in respect of the quarter or levy year

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


omit
clause 13.9

insert
subclause 13.9 (1)

[7] Schedule 22, after subclause 13.12 (1)

insert

(1A) A person mentioned in clause 13.10B must keep records for each levy year setting out the details mentioned in paragraphs (a) to (g) that are applicable to the person:

(a) the quantity at the first point of sale of:
   (i) fresh passionfruit; and
   (ii) processing passionfruit; and
(b) the quantity of fresh passionfruit exported; and
(c) the quantity of processing passionfruit exported; and
(d) the amount of charge or levy payable for the passionfruit; and
(e) the amount of charge or levy paid for the passionfruit; and
(f) the details mentioned in subclause (2) for each person:
   (i) to whom the passionfruit were sold, other than by retail sale; and
   (ii) from whom passionfruit were bought; and
(g) the full name and business or residential address (not the address of a post office box or post office bag) of each person to whom passionfruit were exported.

Penalty: 10 penalty units.

[8] **Schedule 22, subclause 13.12 (2)**

*omit*

paragraph (1) (f),

*insert*

paragraph (1) (f) or (1A) (f),

[9] **Schedule 22, subclause 13.12 (3)**

*omit*

subclause (1)

*insert*

subclause (1) or (1A)

[10] **Schedule 22, after clause 13.12**

*insert*

13.13 **Exemption from lodging quarterly returns**

A person may apply for an exemption from the requirement to lodge quarterly returns if the person has reasonable grounds for believing that:

(a) the sum of the levy and charge on the passionfruit that the person will pay in the levy year will be less than $500; or

(b) the sum of the levy and charge on the passionfruit that the person will be likely to pay will be less than $500.
13.14 **Form of application for exemption**

(1) An application for exemption from the requirement to lodge quarterly returns in a levy year must include:
   (a) the applicant’s personal details; and
   (b) a statement by the applicant that the applicant believes that the sum of levy or charge on passionfruit that the applicant will pay, or be likely to pay, in the levy year will be less than $500; and
   (c) a statement by the applicant that:
      (i) the applicant is liable to pay levy or charge on passionfruit for the levy year; or
      (ii) the applicant may become liable to pay levy or charge on passionfruit for the levy year; or
      (iii) the applicant is liable to pay an amount under subsection 7 (1), (2) or (3) of the Collection Act, in relation to passionfruit, for the levy year; or
      (iv) the applicant may become liable to pay an amount under subsection 7 (1), (2) or (3) of the Collection Act, in relation to passionfruit, for the levy year;

(2) An application must be sent to the Secretary’s postal address.

13.15 **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) When deciding whether to grant the exemption, the Secretary must have regard to:
   (a) either of the following:
      (i) the amount of levy or charge payable for the previous levy year;
      (ii) 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 person is likely to incur in the levy year to which the application relates.

13.16 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) either of the following:
   (i) the amount of levy or charge payable by the person in the previous levy year;
   (ii) the amount of the person’s liability under subsection 7 (1), (2) or (3) of the Collection Act, in the previous levy 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.

13.17 When quarterly returns must 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 after receiving the notice; and

Note For offences in relation to returns, see section 24 of the Collection Act.
13.18 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 13.15 (1) (a); or

(b) refusing to continue an exemption under paragraph 13.16 (1) (a).

Note