EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 111

Issued with the authority of the Minister for Agriculture, Fisheries and Forestry

Primary Industries (Excise) Levies Act 1999

Primary Industries (Excise) Levies Amendment Regulations 2010 (No. 3)

Legislative Authority

Section 8 of the Primary Industries (Excise) Levies Act 1999 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Schedule 27 to the Act provides that the regulations may impose levies or charges on one or more specified primary industry products in the circumstances, at the rates, and payable by the person, ascertained in accordance with the regulations. Primary industry produce includes horticultural products and products that result from agriculture or the cultivation of land (clause 1 of Schedule 27).

Subclause 4(3) of Schedule 15 to the Act provides that the regulations may fix a rate of levy for the purposes of research and development in relation to a class of leviable horticultural products. Subclause 3.1 of Schedule 15 to the Primary Industries (Excise) Levies Regulations 1999 (the Regulations) provides that apples are a leviable horticultural product.

Background

The Act prescribes levies on products of primary industry for the purposes of marketing, research and development (R&D), industry body membership and/or emergency pest and disease response.

The Emergency Plant Pest Response (EPPR) Deed, which came into effect in 2005, is a formal agreement between the Australian Government, all state and territory governments, Plant Health Australia (PHA) and plant industries covering the management and funding of a response to emergency plant pest incidents. Under this agreement, a statutory levy can provide a funding mechanism to enable industries to repay the Australian Government in the event that the government underwrites the industry parties’ shares of the costs of a response to a plant pest affecting their production, as determined under the EPPR Deed.

The industry representative bodies Canegrowers Australia, Australian Table Grape Association, Summerfruits Australia and Apple and Pear Australia Limited are signatories to the EPPR Deed. Under the EPPR Deed, industry parties to the deed must nominate how they will fund their share of costs related to plant pest eradication and/or containment. The sugar cane, table grapes, summer fruit, apple and pear industries have chosen to create the EPPR levies for this purpose.
PHA was established in 2000 as a company responsible for coordinating national plant health matters. Its members consist of plant industries and government at the state, territory and federal level. The Plant Health Australia (Plant Industries) Funding Act 2002 provides a levy or charge mechanism which plant industry members can elect to use to meet their annual member subscriptions.

The Department of Agriculture, Fisheries and Forestry has received requests from these four industry bodies to establish EPPR levies for sugar cane, table grapes, stone fruit, apples and pears. The industry bodies requested that the EPPR levies be initially set at zero. Following an agreed response to a plant pest outbreak, the size of the industry’s debt to the Australian Government will be known. The plant industry will then be advised of the total debt by PHA and repayment arrangements will be implemented. The EPPR levy will then be activated at a positive operative rate.

In addition to the EPPR levies, Apple and Pear Australia Limited also requested changes to the existing PHA and R&D levies for apples.

**Purpose and Impact**

The Primary Industries (Excise) Levies Amendment Regulations 2010 (No. 3) (the Amendment Regulations) amend the Regulations to establish EPPR levies for sugar cane, table grapes, stone fruit, apples and pears. The Amendment Regulations also amend the previous PHA and R&D levies on apples to reduce the R&D levy by 0.01 of a cent per kilogram of the producer’s sale price for apples and increase the PHA levy by 0.01 of a cent per kilogram. The Amendment Regulations also correct one spelling error.

These Amendment Regulations are part of a package of amendments. The package also includes amendments to the following regulations:

- Primary Industries (Customs) Charges Regulations 2000

The amendments to Primary Industries (Customs) Charges Regulations 2000 implement equivalent EPPR charges on table grapes, stone fruit, apples and pears and also make an equivalent amendment to the previous PHA and R&D charges on apples. The amendments to the Primary Industries Levies and Charges Collection Regulations 1991 are consequential to these Amendment Regulations, allowing the collection of the new EPPR levy on sugar cane.

**Consultation**

The Act specifies that, if there is a single body that is a designated body in relation to a particular product, then the Minister must take into consideration any relevant recommendation made to the Minister by the body before the Governor-General makes a regulation in relation to the product (clause 14 of Schedule 27). At the time of making these Amendment Regulations, there were no designated bodies declared by the Minister for the products with which these Amendment Regulations were concerned. However, the Minister did take into account recommendations from the national peak representative industry bodies for sugar cane, table grapes, summer fruit, apples and pears in approving these Amendment Regulations.
Subclause 6(6) of Schedule 15 to the Act provides that, before the Governor-General makes regulations for the purpose of prescribing an R&D levy, the Minister must take into consideration any relevant recommendation made to the Minister by the industry services body. Horticulture Australia Limited was the declared industry services body for apples at the time of making these Amendment Regulations (see clause 1 of Schedule 15 to the Act and section 9 to the *Horticulture Marketing and Research Development Services Act 2000*). The Minister has taken into consideration the recommendation made by Horticulture Australia Limited on 9 March 2010 to make the Amendment Regulations.

Subclause 6(8) of Schedule 15 to the Act provides that, before making a recommendation to the Minister, the industry services body must consult with the eligible industry body prescribed under the regulations. Apple and Pear Australia Limited was the prescribed eligible industry body for the apple industry at the time of making these Amendment Regulations (see clause 3.5 of Schedule 15 to the Regulations). Horticulture Australia Limited and Apple and Pear Australia Limited worked together during the entire levy payer consultation process prior to requesting the changes to the levies.

For a new levy to be imposed, or for a levy to be amended, industry (generally through its representative body) must demonstrate that the Australian Government Levy Principles and Guidelines have been complied with. This includes demonstrating that sufficient consultation has been undertaken with all sectors of the potentially effected industry or current levy payers, and that there is industry support for the new levy or change in levy rate. The proposals received by the Department of Agriculture, Fisheries and Forestry from Canegrowers Australia (August 2009), the Australian Table Grape Association (May 2008), Summerfruits Australia (November 2009) and Apple and Pear Australia Limited (August 2009) demonstrated industry compliance with the Australian Government Levy Principles and Guidelines.

The Office of Best Practice Regulation determined that the amendments would have a low impact on business and impose low compliance costs. Therefore, no further consultation in the form of a Business Cost Calculator or a Regulation Impact Statement was required for the amendments.

**Operation**

Details of the Amendment Regulations are set out below.

Regulation 1 specifies that the name of the Amendment Regulations is the *Primary Industries (Excise) Levies Amendment Regulations 2010 (No. 3).*

Regulation 2 provides two different commencement dates for the Amendment Regulations. Regulations 1 to 3 and Schedule 1 to the Amendment Regulations commence on the day after registration of the Amendment Regulations on the Federal Register of Legislative Instruments. Schedule 2 to the Amendment Regulations commences on the first day of the first month after the month in which the rest of the Amendment Regulations commence. The amendments provided under Schedule 1 establish EPPR levies for stone fruit, table grapes and sugar cane at a nil operative rate. The amendments provided under Schedule 2 establish the EPPR levies on apples and pears, and amend the R&D and PHA levies for apples.
As the Schedule 2 amendments impose changes to operative levy rates (in relation to apples), a delayed commencement was provided to allow sufficient notice to be given to affected industry levy payers.

**Regulation 3** provides that Schedules 1 and 2 amend the *Primary Industries (Excise) Levies Regulations 1999.*

### Schedule 1 Amendments

**Item 1** amends paragraph 2A of the Reader’s Guide to explain that levies are imposed on some plant products to fund national emergency plant pest responses. This has no effect on the operation of the Regulations and assists readers only.

**Items 2 and 3** insert new Divisions into Part 15 of Schedule 15 to the Regulations, which prescribes levies on stone fruit, and also insert the new EPPR levy on stone fruit. Item 2 inserts a new Division 15.1 titled ‘Product levy’, to cover the previously existing basic product levies for marketing and R&D. Item 3 then inserts a new Division 15.2 titled ‘Special purpose levies’, and a new clause (clause 15.6) under that Division prescribing an EPPR levy on stone fruit. The new Divisions are consistent with other parts of Schedule 15 that prescribe EPPR levies on other commodities and assist in reading the legislation.

Clause 2 of Schedule 27 to the Act provides that the regulations may specify one or more commodities on which a levy is imposed. Clause 6 of Schedule 27 to the Act provides that the regulations may specify the rate of the levy. Clause 11 of Schedule 27 to the Act provides that the person liable to pay the levy is ascertained in accordance with the Regulations. All of the new EPPR levies that were inserted by the Amendment Regulations are made for the purposes of clauses 2, 6 and 11 of Schedule 27 to the Act. This explanation applies to each of the new EPPR levies that were inserted by the Amendment Regulations as described below.

New subclause 15.6(1) prescribes ‘stone fruit’ as the commodity on which the EPPR levy is imposed for the purposes of clause 2 of Schedule 27 to the Act. The EPPR levy applies to the same commodity of ‘stone fruit’ on which the marketing and R&D levies were previously, and are currently, applied. New subclause 15.6(2) specifies a nil levy rate on stone fruit for the purposes of clause 6 of Schedule 27 to the Act. The reasons for setting the rate at nil have been outlined above. New subclause 15.6(3) specifies, for the purposes of clause 11 of Schedule 27 to the Act, that the levy is payable by the producer of the stone fruit.

**Items 4 and 5** insert new Divisions into Part 20 of Schedule 15 to the Regulations, which prescribes levies on table grapes, and also insert the new EPPR levy on table grapes. Item 4 inserts a new Division 20.1 titled ‘Product levy’, to cover the previously existing basic product levies for marketing and R&D. Item 5 then inserts a new Division 20.2 titled ‘Special purpose levies’, and a new clause (clause 20.6) under that Division prescribing an EPPR levy on table grapes. The new Divisions are consistent with other parts of Schedule 15 that prescribe EPPR levies on other commodities and assist in reading the legislation.
New subclause 20.6(1) prescribes ‘table grapes’ as the commodity on which the EPPR levy is imposed for the purposes of clause 2 of Schedule 27 to the Act. The EPPR levy applies to the same commodity of ‘table grapes’ on which the marketing and R&D levies were previously, and are currently, applied. New subclause 20.6(2) specifies a nil levy rate on table grapes for the purposes of clause 6 of Schedule 27 to the Act. The reasons for setting the rate at nil have been outlined above. New subclause 20.6(3) specifies, for the purposes of clause 11 of Schedule 27 to the Act, that the levy is payable by the producer of the table grapes.

Items 6 and 7 insert new Parts into Schedule 24 to the Regulations, which prescribes levies on sugar cane, and also insert the new EPPR levy on sugar cane. Item 6 inserts a new Part 1 titled ‘Product levy’, to cover the previously existing basic product levy. Item 7 then inserts a new Part 2 titled ‘Special purpose levies’, and a new clause (clause 3) under that part prescribing an EPPR levy on sugar cane. The new Parts are consistent with other Schedules that prescribe EPPR levies on other commodities and assist in reading the legislation.

New subclause 3(1) prescribes ‘sugar cane’ as a commodity on which the EPPR levy is imposed for the purposes of clause 2 of Schedule 27 to the Act. The EPPR levy applies to the same commodity of ‘sugar cane’ on which the levy previously and currently applies. New subclause 3(2) specifies a nil levy rate on sugar cane for the purposes of clause 6 of Schedule 27 to the Act. The reasons for setting the rate at nil have been outlined above. New subclause 3(3) specifies that the levy is payable by the producer of the sugar cane for the purposes of clause 11 of Schedule 27 to the Act.

Item 8 corrects a spelling error in the title to Part 1 of Schedule 25 to the Regulations. The item substitutes the previously incorrectly spelt title, ‘Product Levys’, with the correctly spelt title – ‘Product levy’. This is consistent with the part titles of other Schedules to the Regulations.

Schedule 2 Amendments

Item 1 inserts a new Division 3.1 into Part 3 of Schedule 15 to the Regulations titled ‘Product levy’. This Division covers the marketing and R&D levies for apples and pears that existed prior to the making of these Amendment Regulations. A new Division 3.2 titled ‘Special purpose levies’ is also inserted by the Amendment Regulations (see item 4). This covers the previously existing PHA levy and the new EPPR levy that is also inserted by item 4. The new divisions are consistent with those of other parts of Schedule 15 and assist in reading the legislation.

Item 2 amends the R&D levy rate on apples (other than juicing apples or processing apples) specified under paragraph 3.4(a) of Schedule 15. The item substitutes the previous R&D levy rate of 0.73 of a cent per kilogram of the producer’s sale price for apples with a new rate of 0.72 of a cent per kilogram. In conjunction with the increase of the PHA levy from 0.01 of a cent per kilogram of the producer’s sale price for apples to 0.02 of a cent per kilogram (see item 4), this amendment enables Apple and Pear Australia Limited, the apple industry representative body, to meet the apple industry’s increase in PHA annual subscription fees without increasing the overall levy liability on the industry.
Item 3 omits the previous clause 3.4A of Schedule 15 to the Regulations. The clause previously prescribed the PHA levy on apples (other than juicing apples or processing apples). This clause has been renumbered as clause 3.6 and moved to Division 3.2 of Schedule 15, as the PHA levy is a ‘Special purpose levy’ (see item 4). This assists in reading the legislation and sets out the numbering and divisions in line with other parts of Schedule 15.

Item 4 inserts a new Division 3.2 titled ‘Special purpose levies’, and inserts new clauses 3.6 and 3.7 under that Division amending the PHA levy on apples and prescribing the new EPPR levies on apples and pears.

New clause 3.6 imposes the PHA levy on apples (other than juicing apples or processing apples). This is not a new type of levy imposed on the apple industry as it was previously imposed by clause 3.4A of Schedule 15. Moving the PHA levy clause to this Division is intended to assist in reading the legislation and sets out the numbering and divisions in line with other parts of Schedule 15. The wording of the new clause 3.6 is the same as in the previous clause 3.4A. However, the rate of levy has been increased from 0.01 of a cent per kilogram of the producer’s sale price for apples to 0.02 of a cent per kilogram. This enables Apple and Pear Australia Limited to meet the apple industry’s increase in PHA annual subscription fees. There is no overall increase in levy liability on the apple industry as there is a corresponding decrease in the R&D levy by 0.01 of a cent per kilogram of the producer’s sale price for apples (see item 2).

Once the PHA annual subscription is paid, any further funds collected, via the payment of the PHA levy under clause 3.6, are automatically appropriated to the industry’s R&D fund in accordance with section 7 of the Plant Health Australia (Plant Industries) Funding Act 2002. Apple and Pear Australia Limited requested these changes to the apple R&D and PHA levies in accordance with the Australian Government Levy Principles and Guidelines.

Item 4 also inserts a new clause 3.7 into Schedule 15 to the Regulations prescribing EPPR levies on apples and pears. New subclause 3.7(1) prescribes ‘apples and pears’ as the commodities on which the EPPR levy is imposed for the purposes of clause 2 of Schedule 27 to the Act. The EPPR levy applies to the same commodities of ‘apples and pears’ on which the marketing and R&D levies were previously, and are currently, imposed by Schedule 15 to the Act. New subclause 3.7(2) specifies a nil levy rate on apples and pears for the purposes of clause 6 of Schedule 27 to the Act. The reasons for setting the rate at nil have been outlined above. New subclause 3.7(3) specifies that the levy on apples is payable by the producer of the apples for the purposes of clause 11 of Schedule 27 to the Act. New subclause 3.7(4) specifies that the levy on pears is payable by the producer of the pears for the purposes of clause 11 of Schedule 27 to the Act.