EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 110

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

Primary Industries (Customs) Charges Act 1999

Primary Industries (Customs) Charges Amendment Regulations 2010 (No. 2)

Legislative Authority

Section 8 of the Primary Industries (Customs) Charges 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 14 to the Act provides that the regulations may impose 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 14).

Subclause 3(5) of Schedule 10 to the Act provides that the regulations may fix a rate of charge for the purposes of research and development in relation to a class of chargeable horticultural products. Subclause 3.1 of Schedule 10 to the Primary Industries (Customs) Charges Regulations 2000 (the Regulations) provides that apples are a chargeable horticultural product.

Background

The Act prescribes charges 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 charge 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 of 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 table grapes, summer fruit, apple and pear industries have chosen to create the EPPR charges 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 the relevant industry bodies to establish EPPR charges for table grapes, stone fruit, apples and pears. The industry bodies requested that the EPPR charges 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 charge will then be activated at a positive operative rate.

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

**Purpose and Impact**

The Primary Industries (Customs) Charges Amendment Regulations 2010 (No. 2) (the Amendment Regulations) amend the Regulations to establish EPPR charges for table grapes, stone fruit, apples and pears. The Amendment Regulations also amend the previous PHA and R&D charges 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.

These Amendment Regulations were part of a package of amendments. The package also included amendments to the following regulations:
- Primary Industries (Excise) Levies Regulations 2000

The amendments to Primary Industries (Excise) Levies Regulations 2000 implement equivalent EPPR levies on table grapes, stone fruit, apples and pears and also make equivalent amendments to the previous PHA and R&D levies on apples. The amendments to the Primary Industries Levies and Charges Collection Regulations 1991 are consequential to the Primary Industries (Excise) Levies Regulations 2000, 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 13 of Schedule 14). At the time of making these Amendment Regulations, there were no designated bodies declared by the Minister for the products with which the Amendment Regulations were concerned. However, the Minister did take into account recommendations from the national peak representative industry bodies for table grapes, summer fruit, apples and pears in approving these Amendment Regulations.
Subclause 5(5) of Schedule 10 to the Act provides that, before the Governor-General makes regulations for the purpose of prescribing an R&D charge, 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 10 to the Act and section 9 of 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 5(7) of Schedule 10 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 is the prescribed eligible industry body for the apple industry (clause 3.5 of Schedule 10 to the Regulations). Horticulture Australia Limited and Apple and Pear Australia Limited have been working together during the entire levy payer consultation process.

For a new charge to be imposed or for a charge 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 charge payers, and that there is industry support for the new charge or change in charge rate. The proposals received by the Department of Agriculture, Fisheries and Forestry from the Australian Table Grape Association (May 2008), Summerfruits Australia (May and 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 the name of the Amendment Regulations as the *Primary Industries (Customs) Charges Amendment Regulations 2010 (No. 2)*.

**Regulation 2** provides two different commencement dates for the amendments. Regulations 1 to 3 and Schedule 1 to the Amendment Regulations commence on the day after registration 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 charges on stone fruit and table grapes at a nil operative rate. The amendments provided under Schedule 2 establish the EPPR charges on apples and pears, and amend the R&D and PHA charges on apples.
As the Schedule 2 amendments impose changes to operative charge rates (in relation to apples), a delayed commencement was provided to allow sufficient notice to be given to affected industry charge payers.

Regulation 3 provides that Schedules 1 and 2 amend the *Primary Industries (Customs) Charges Regulations 2000*.

**Schedule 1 Amendments**

**Item 1** amends paragraph 2A of the Reader’s Guide to explain that charges 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 10 to the Regulations, which prescribes charges on stone fruit, and also insert the new EPPR charge on stone fruit. Item 2 inserts a new Division 15.1 titled ‘Product charge’ to cover the previously existing basic product charges for marketing and R&D. Item 3 then inserts a new Division 15.2 titled ‘Special purpose charges’, and a new clause (clause 15.6) under that Division prescribing an EPPR charge on stone fruit. The new Divisions are consistent with other parts of Schedule 10 that prescribe EPPR charges on other commodities and assist in reading the legislation.

Clause 2 of Schedule 14 to the Act provides that the regulations may specify one or more commodities on which a charge is imposed. Clause 5 of Schedule 14 to the Charges Act provides that the regulations may specify the rate of the charge. Clause 10 of Schedule 14 provides that the person liable to pay the charge is ascertained in accordance with the Regulations. All of the new EPPR charges that were inserted by the Amendment Regulations are made for the purposes of clauses 2, 5 and 10 of Schedule 14 to the Charges Act. This explanation applies to each of the new EPPR charges inserted by the Amendment Regulations, as described below.

New subclause 15.6(1) prescribes ‘stone fruit’ as the commodity on which the EPPR charge is imposed for the purposes of clause 2 of Schedule 14 to the Act. The EPPR charge applies to the same commodity of ‘stone fruit’ on which the marketing and R&D charges were previously, and are currently, applied. New subclause 15.6(2) specifies a nil levy rate on stone fruit for the purposes of clause 5 of Schedule 14 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 10 of Schedule 14 to the Act, that the charge is payable by the producer of the stone fruit.

**Items 4 and 5** insert new Divisions into Part 20 of Schedule 10 to the Regulations, which prescribes charges on table grapes, and also insert the new EPPR charge on table grapes. Item 2 inserts a new Division 20.1 titled ‘Product charge’ to cover the previously existing basic product charges for marketing and R&D. Item 3 then inserts a new Division 20.2 titled ‘Special purpose charges’, and a new clause (clause 20.6) under that Division prescribing an EPPR charge on table grapes. The new Divisions are consistent with other parts of Schedule 10 that prescribe EPPR charges on other commodities and assist in reading the legislation.

New subclause 20.6(1) prescribes ‘table grapes’ as the commodity on which the EPPR charge is imposed for the purposes of clause 2 of Schedule 14 to the Act. The EPPR
charge applies to the same commodity of ‘table grapes’ on which the marketing and R&D charges were previously, and are currently, applied. New subclause 20.6(2) specifies a nil levy rate on stone fruit for the purposes of clause 5 of Schedule 14 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 10 of Schedule 14 to the Act, that the charge is payable by the producer of the table grapes.

Schedule 2 Amendments

Item 1 inserts a new Division 3.1 into Part 3 of Schedule 10 to the Regulations titled ‘Product charge’. This Division covers the previously existing marketing and R&D charges for apples and pears. A new Division 3.2 titled ‘Special purpose charges’ is also inserted by the Amendment Regulations (see item 4). This covers the previously existing PHA charge and the new EPPR charge that is also inserted by item 4. The new Divisions are consistent with those of other parts of Schedule 10 and assist in reading the legislation.

Item 2 amends the R&D charge rate on apples specified under paragraph 3.4(a) of Schedule 10 to the Regulations. The item substitutes the existing R&D charge 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 charge 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 charge liability on the industry.

Item 3 omits the previous clause 3.4A of Schedule 10 to the Regulations. This clause previously prescribed the PHA charge on apples. This clause has been renumbered as clause 3.6 and moved to Division 3.2 of the Regulations, as the PHA charge is a ‘Special purpose charge’ (see item 4). This assists in reading the legislation and sets out the numbering and divisions in line with other parts of Schedule 10.

Item 4 inserts a new Division 3.2 titled ‘Special purpose charges’ into Schedule 10 to the Regulations, and inserts new clauses 3.6 and 3.7 under that Division amending the PHA charge on apples and prescribing the new EPPR charge on apples and pears.

New clause 3.6 imposes the PHA charge on apples. This is not a new type of charge imposed on the apple industry as it was previously imposed by clause 3.4A of Schedule 10 to the Regulations. Moving the PHA charge clause assists in reading the legislation and sets out the numbering and divisions in line with other parts of Schedule 10. The wording of the new clause 3.6 is the same as in the previous clause 3.4A. However, the rate of charge 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 charge 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 charge under clause 3.6 would be 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 charges in accordance with the Australian Government Levy Principles and Guidelines.

Item 4 also inserts a new clause 3.7 to prescribe an EPPR charge on apples and pears. New subclause 3.7(1) prescribes ‘apples and pears’ as the commodities on which the EPPR charge is imposed for the purposes of clause 2 of Schedule 14 to the Act. The EPPR charge applies to the same commodities of ‘apples and pears’ on which the marketing and R&D charges were previously, and are currently, imposed by Schedule 10 to the Act. New subclause 3.7(2) specifies a nil charge rate on apples and pears for the purposes of clause 5 of Schedule 14 to the Act. The reasons for setting the rate at nil have been outlined above. New subclause 3.7(3) specifies, for the purposes of clause 10 of Schedule 14 to the Act, that the charge on apples is payable by the producer of the apples. New subclause 3.7(4) specifies, for the purposes of clause 10 of Schedule 14 to the Act, that the charge on pears is payable by the producer of the pears.