



# Primary Industries Levies and Charges Collection Regulations 1991

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made under the

*Primary Industries Levies and Charges Collection Act 1991*

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Volume 1: regulations 1–12  
Schedules 1–21

**Volume 2: Schedule 22**

Volume 3: Schedules 23–36

Volume 4: Schedule 37  
Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Primary Industries Levies and Charges Collection Regulations 1991* that shows the text of the law as amended and in force on 1 September 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Schedule 22—Horticultural products**

### **Part 1—Definitions**

#### **1.1 Definitions for Schedule 22**

In this Schedule:

**charge** means charge of any of the following kinds:

- (a) charge imposed under Schedule 10 to the Customs Charges Act;
- (b) EPPR charge imposed under Schedule 10 to the Customs Charges Regulations;
- (c) PHA charge imposed under Schedule 10 to the Customs Charges Regulations.

**levy** means levy of any of the following kinds:

- (a) levy imposed under Schedule 15 to the Excise Levies Act;
- (b) EPPR levy imposed under Schedule 15 to the Excise Levies Regulations;
- (c) PHA levy imposed under Schedule 15 to the Excise Levies Regulations.

**personal details**, for a person, means:

- (a) the person's full name; and
- (b) the person's business or residential address (not the address of a post office box or post office bag); and
- (c) if the person has a post office box address or post office bag address—that address; and
- (d) the person's ABN, if any; and
- (e) if the person is a company and does not have an ABN—its ACN.

## Part 2—Almonds

### 2.1 Application

This Part applies to almonds.

### 2.2 Definitions for Part 2

In this Part:

**almond** means a nut of the almond tree or a hybrid of the almond tree that is generally accepted as an almond tree.

**chargeable almonds** means almonds on which charge is imposed.

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

**retail sale** means the sale of almonds by a producer of the almonds, except a sale:

- (a) to a first purchaser, a buying or an exporting agent or an exporter; or
- (b) through a selling agent.

Note 1: Almonds are chargeable horticultural products—see Part 2 of Schedule 10 to the Customs Charges Regulations.

Note 2: Almonds are leviable horticultural products—see Part 2 of Schedule 15 to the Excise Levies Regulations.

### 2.3 What is a levy year

For the definition of levy year in subsection 4(1) of the Collection Act, a levy year for almonds is a financial year.

### 2.4 Who is a producer

For paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act, leviable almonds 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 that marketing law; or
- (b) where 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, **producer** means the person who exports the product from Australia.

## **2.5 When is charge or levy due for payment**

For section 6 of the Collection Act, charge or levy payable on almonds for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 2.7—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 2.7—on the last day of that period.

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

## **2.6 Who must lodge a return**

The following persons must lodge a return for a quarter:

- (a) a producer who sells almonds by retail sale in the quarter;
- (b) a first purchaser or buying agent who buys almonds from a producer in the quarter;
- (c) a selling agent who sells almonds for a producer in the quarter;
- (d) an exporter or exporting agent who exports almonds in the quarter.

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

## **2.7 When must a return be lodged**

A return for a quarter 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.

## **2.8 What must be included in a return**

In addition to the information required by regulation 10, a return for a quarter must state, in respect of the quarter, for almonds bought or sold and for which charge or levy is payable by the person lodging the return:

- (a) whether the almonds are of the Nonpareil variety; and
- (b) whether any of the almonds were bought or sold in their shells or shelled; and
- (c) the weight at the first point of sale of each kind of the almonds; and
- (d) the amount of charge or levy payable for each kind of the almonds; and
- (e) the amount of charge or levy paid by the person lodging the return for each kind of the almonds.

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

## **2.9 What records must be kept**

- (1) A person mentioned in clause 2.6 must keep records showing, in respect of each levy year:
  - (a) for almonds bought, sold, or exported by the person:
    - (i) whether the almonds are of the Nonpareil variety; and

Clause 2.9

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- (ii) whether any of the almonds were bought, sold or exported in their shells or shelled; and
- (iii) the weight at the first point of sale of each kind of the almonds; and
- (b) the amount of charge or levy payable for each kind of the almonds; and
- (c) the amount of charge or levy paid for each kind of the almonds; and
- (d) the total amount of charge or levy payable for the almonds; and
- (e) the total amount of charge or levy paid for the almonds; and
- (f) the details mentioned in subclause (2) for:
  - (i) each person to whom almonds were sold, other than by retail sale; and
  - (ii) each person from whom almonds were bought; and
- (g) for each person to whom almonds were exported:
  - (i) the person's full name; and
  - (ii) the person's business or residential address (not the address of a post office box or post office bag).

Penalty: 10 penalty units.

- (2) For paragraph (1)(f), the details are:
  - (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.
- (3) 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.

## **Part 3—Apples and pears**

### **3.1 Application**

This Part applies to apples and pears.

### **3.2 Definitions for Part 3**

In this Part:

**apple** means a fruit of any species of the genus *Malus*.

**apple juice** includes:

- (a) cider; and
- (b) any other beverage distilled from apples.

**chargeable apples and pears** means apples and pears on which charge is imposed.

**class**, in relation to apples or pears, means any one of the following classes of apples or pears:

- (a) apples, other than juicing apples or processing apples;
- (b) pears, other than juicing pears or processing pears;
- (c) juicing apples;
- (d) juicing pears;
- (e) processing apples;
- (f) processing pears.

**fruit juice** includes:

- (a) apple juice; and
- (b) pear juice.

**juicing apples** means apples:

- (a) sold by the producer to a buying agent or a first purchaser, or through a selling agent, for use in the production in Australia of fruit juice; or
- (b) used by the producer in the production in Australia of fruit juice.

**juicing pears** means pears:

- (a) sold by the producer to a buying agent or a first purchaser, or through a selling agent, for use in the production in Australia of fruit juice; or
- (b) used by the producer in the production in Australia of fruit juice.

**leviable apples and pears** means apples and pears on which levy is imposed.

**pear** means a fruit of any species of the genus *Pyrus*, except fruits of the species *Pyrus pyrifolia* (nashi).

**pear juice** includes:

Clause 3.3

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- (a) perry; and
- (b) any other beverage distilled from pears.

**processing apples** means apples:

- (a) sold by the producer to a buying agent or a first purchaser, or through a selling agent, for use in the production in Australia of a processed product other than fruit juice; or
- (b) used by the producer in the production in Australia of a processed product other than fruit juice.

**processing pears** means pears:

- (a) sold by the producer to a buying agent or a first purchaser, or through a selling agent, for use in the production in Australia of a processed product other than fruit juice; or
- (b) used by the producer in the production in Australia of a processed product other than fruit juice.

**retail sale**, for a sale of apples or pears by a producer, means a sale by the producer of the apples or pears, except a sale:

- (a) to a buying agent or a first purchaser; or
- (b) through a selling agent.

**specified amount** means:

- (a) \$2 000; or
- (b) if an order under clause 3.20 is in force—the amount specified in that order.

Note 1: Apples and pears are chargeable horticultural products—see Part 3 of Schedule 10 to the Customs Charges Regulations.

Note 2: Apples and pears are leviable horticultural products—see Part 3 of Schedule 15 to the Excise Levies Regulations.

### 3.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for apples and pears is a calendar year.

### 3.4 Who is a producer

For paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act, leviable apples and pears 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.

### **3.5 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 apples or pears for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 3.7—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 3.7—on the last day of that period.

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

### **3.6 Who must lodge a quarterly return**

(1) The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys apples or pears in the quarter;
- (b) a buying agent who buys apples or pears in the quarter;
- (c) a selling agent who sells apples or pears in the quarter;
- (d) a person who exports apples or pears in the quarter.

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

(2) However, a person mentioned in subclause (1) does not have to lodge quarterly returns for a levy year if:

- (a) the person has applied under clause 3.15 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 the levy year under clause 3.17, or has continued the person's exemption under clause 3.18; or
- (c) the Secretary is required under clause 3.18 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **3.7 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.

### **3.8 What must be included in a quarterly return**

(1) In addition to the information required by regulation 10, a return for a quarter lodged by a first purchaser, buying agent or selling agent must state, in respect of the quarter:

- (a) the quantity of each class of apples, and of pears, bought, sold or used by the person lodging the return; and

Clause 3.9

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- (b) the amount of levy payable for each of those quantities; and
- (c) the total of the amount of levy payable; and
- (d) the total amount of levy paid by that person.

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

- (2) In addition to the information required by regulation 10, a return for a quarter lodged by a person who has exported apples or pears must state, in respect of the quarter:

- (a) the quantity of apples, and of pears, exported by the person; and
- (b) the amount of charge payable:
  - (i) for the apples; and
  - (ii) for the pears; and
- (c) the total amount of charge payable for the apples and pears; and
- (d) the total amount of charge paid by the person for the apples and pears.

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

### 3.9 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 apples or pears for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 3.11—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 3.11—on that day.

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

### 3.10 Who must lodge an annual return

- (1) A producer must lodge an annual return for a levy year if, in that levy year:
- (a) the producer:
    - (i) sold apples or pears by retail sale; or
    - (ii) used juicing apples or juicing pears; or
    - (iii) used processing apples or processing pears; and
  - (b) the total quantity of the apples, pears, juicing apples, juicing pears, processing apples and processing pears mentioned in paragraph (a) is not less than 9 000 kilograms.

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

- (2) A first purchaser who is exempt from lodging quarterly returns for a levy year must lodge an annual return for that levy year if, in that levy year, the first purchaser bought any apples or pears.

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

- (3) A buying agent or selling agent who is exempt from lodging quarterly returns for a levy year must lodge an annual return for that levy year if, in that levy year, the agent bought or sold any apples or pears.

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

- (4) A person who exports apples or pears who is exempt from lodging quarterly returns for a levy year must lodge an annual return for that levy year if, in that levy year, the person exported any apples or pears.

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

### **3.11 When must an annual return be lodged**

An annual return for a levy year must be lodged on or before 28 February in the following levy year.

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

### **3.12 What must be included in an annual return—producers**

In addition to the information required by regulation 10, a return for a levy year lodged by a producer must state, in respect of the levy year:

- (a) the quantity of each class of apples, and of pears, sold or used by the producer; and
- (b) the amount of levy payable for each of those quantities; and
- (c) the total amount of levy payable for the apples and pears; and
- (d) the total amount of levy paid by the producer for the apples and pears.

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

### **3.13 What must be included in an annual return—first purchasers and agents**

In addition to the information required by regulation 10, a return for a levy year lodged by a first purchaser, buying agent or selling agent must state, in respect of the levy year:

- (a) the quantity of each class of apples, and of pears, bought or sold by the first purchaser or agent; and
- (b) the total of the amounts of levy payable for those quantities; and
- (c) the amount of levy previously paid by the first purchaser or agent in that levy year; and
- (d) the net amount of levy payable for all classes of apples and pears; and
- (e) the total amount of levy paid by the first purchaser or agent.

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

### **3.14 What must be included in an annual return—persons who export apples or pears**

In addition to the information required by regulation 10, a return for a levy year lodged by a person who exports apples or pears must state, in respect of the levy year:

- (a) the quantity of apples, and of pears, exported by the person; and
- (b) the amount of charge payable for the apples, and for the pears; and
- (c) the total amount of charge payable for the apples and pears; and

Clause 3.15

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- (d) the total amount of charge paid by the person for the apples and pears.

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

### **3.15 Exemption from lodging quarterly returns**

- (1) A first purchaser, buying agent, or selling agent may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the levy payable by the person for that levy year will be less than the specified amount.
- (2) A person who exports apples or pears in a levy year may apply for exemption from the requirement to lodge quarterly returns for the year if the person has reason to believe that the charge payable by the producer for that levy year will be less than the specified amount.

### **3.16 Form of application for exemption**

- (1) An application for an exemption must state the following details:
  - (a) the applicant's full name;
  - (b) the applicant's business or residential address (not the address of a post office box or post office bag);
  - (c) if the applicant has a post office box or a post office bag address—that address;
  - (d) the applicant's ABN, if any;
  - (e) if the applicant is a company and does not have an ABN—its ACN.
- (2) If the applicant is a first purchaser, buying agent or selling agent, the application must include:
  - (a) a statement to the effect that the applicant is a first purchaser, a buying agent, or a selling agent, who will, or may, incur a liability under subsection 7(1) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than the specified amount.
- (3) If the applicant is a person who exports apples or pears, the application must include:
  - (a) a statement to the effect that the applicant is a producer or exporting agent who will, or may, incur a liability under subsection 7(3) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than the specified amount.
- (4) An application must be sent to the Secretary's postal address.

### **3.17 Grant or refusal of exemption**

- (1) The Secretary must, within 14 days after receiving an application:
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- (a) decide whether to grant the exemption; and
  - (b) give the applicant written notice of the decision.
- (2) In deciding whether to grant an exemption, the Secretary must take into account:
- (a) the amount of levy or charge payable by the applicant in the preceding 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 under subsection 7(1) or (3) of the Collection Act in the levy year to which the application relates.

### **3.18 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
- (a) decide whether to continue the exemption for the next 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 charge payable by the person 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 under subsection 7(1) or (3) of the Collection Act in the following levy year.

### **3.19 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 after receiving the notice; and
- (b) otherwise—within 28 days of the end of the quarter to which the return relates.

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

### **3.20 Orders—specified amount**

The Minister may specify, by order, an amount, not exceeding \$5 000, for paragraph (b) of the definition of *specified amount* in clause 3.2.

### **3.21 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter:
- (a) the quantity of each class of apples, and of pears, used by the producer or sold by retail sale by the producer; and

Clause 3.22

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- (b) the amounts of levy and charge payable for each class of the apples and pears; and
- (c) the amounts of levy and charge paid by the producer for each class of the apples and pears.

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.

### 3.22 What records must be kept—first purchasers

- (1) A first purchaser of apples or pears must keep records showing, in respect of each quarter:
- (a) the quantity of each class of apples, and of pears, bought from a producer; and
  - (b) the amounts of levy and charge payable for each class of the apples and pears; and
  - (c) the amounts of levy and charge paid by the first purchaser for each class of the apples and pears.

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.

### 3.23 What records must be kept—agents

- (1) A buying agent and a selling agent of apples or pears must keep records showing, in respect of each quarter:
- (a) the quantity of each class of apples, and of pears, bought or sold by the agent; and
  - (b) the amounts of levy and charge payable for each class of the apples and pears; and
  - (c) the amounts of levy and charge paid by the agent for each class of the apples and pears.

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.

### **3.24 What records must be kept—persons who export apples or pears**

- (1) A person who exports apples or pears must keep records showing, in respect of each quarter:
  - (a) the quantity of apples and pears exported by the person; and
  - (b) the amounts of levy and charge payable for each class of the apples and pears; and
  - (c) the amounts of levy and charge paid by the person for each class of the apples and pears.

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.

### **3.25 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 3.17(1)(a) to grant an exemption; or
- (b) refusing under paragraph 3.18(1)(a) to continue an exemption.

## Part 4—Avocados

### 4.1 Application

This Part applies to avocados.

### 4.2 Definitions for Part 4

In this Part:

*avocado* means a fruit of the species *Persea americana*.

*chargeable avocados* means avocados on the export of which charge is imposed.

*deal* means sell, buy, process or export.

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

*fresh avocados* means avocados other than processing avocados.

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.

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

*processing avocados* means avocados:

- (a) sold by the producer to a first purchaser, or 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 avocados 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: Avocados are chargeable horticultural products—see Part 4 of Schedule 10 to the Customs Charges Regulations.

Note 2: Avocados are leviable horticultural products—see Part 4 of Schedule 15 to the Excise Levies Regulations.

### 4.3 What is a levy year

For the definition of *levy year* in subsection 4(1) of the Collection Act, a levy year for chargeable and leviable avocados is a calendar year.



#### 4.3A What is not a process

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

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

#### 4.3B Who is a processor

Avocados 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 processes 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.

#### 4.3C Liability of intermediaries—processors

Avocados 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, any penalty for late payment imposed by subsection 15(1) of the Collection Act.

#### 4.4 Who is a producer

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, leviable avocados 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.

Clause 4.5

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#### **4.5 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 avocados for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 4.7.

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

#### **4.6 Who must lodge a quarterly return**

- (1) Each of the following persons must lodge a return for a quarter:
  - (a) a first purchaser who buys avocados in the quarter;
  - (b) a buying agent who buys avocados in the quarter;
  - (c) a selling agent who sells avocados in the quarter;
  - (d) an exporter who exports avocados in the quarter;
  - (e) an exporting agent who exports avocados in the quarter;
  - (f) a processor who processes avocados in the quarter;
  - (g) a producer who sells avocados other than by retail sale 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 quarterly returns for a levy year if:
  - (a) the person has applied under clause 4.12 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 clause 4.14, or has continued the person's exemption under clause 4.15; or
  - (c) the Secretary is required under clause 4.15 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

#### **4.7 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.

#### **4.8 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 avocados for a levy year is due for payment on 28 February in the following levy year.

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

#### **4.9 Who must lodge an annual return**

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

- (a) a producer who sells leviable avocados by retail sale in the levy year;
- (b) a person who deals with leviable or chargeable avocados 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.

#### **4.10 When must an annual return be lodged**

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

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

#### **4.11 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 avocados bought, sold or exported by the person lodging the return for which charge or levy is payable:

- (a) for avocados bought or sold by the person, the quantity at the first point of sale of:
  - (i) fresh avocados; and
  - (ii) processing avocados; and
- (b) for avocados exported by the person, the quantity of avocados; and
- (c) the amount of levy or charge payable for the avocados; and
- (d) the amount of levy or charge paid by that person for the avocados.

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

#### **4.12 Exemption from lodging quarterly returns**

- (1) A person may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the total quantity of avocados with which the person will, or is likely to, deal in that levy year is less than 36 tonnes.
- (2) A reference in subclause (1) to the quantity of avocados with which a person will, or is likely to, deal in a levy year is a reference to:
  - (a) the quantity of avocados for which the person is, or may become, liable to pay levy or charge for the year; or
  - (b) the quantity of avocados for which the person is, or may become, liable to pay an amount under subsection 7(1) or (3) of the Collection Act.

#### **4.13 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 following details:
    - (i) the applicant's full name;
    - (ii) the applicant's business or residential address (not the address of a post office box or post office bag);
    - (iii) if the applicant has a post office box or a post office bag address—that address;

Clause 4.14

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- (iv) the applicant's ABN, if any;
  - (v) if the applicant is a company and does not have an ABN—its ACN;  
and
  - (b) a statement to the effect that:
    - (i) the applicant is, or may become, liable to pay levy or charge for the year; or
    - (ii) that the applicant is, or may become, liable to pay an amount under subsection 7(1) or (3) of the Collection Act for the year; and
  - (c) a statement to the effect that the applicant believes that the quantity of avocados for which the applicant will or may be liable to pay levy or charge, or an amount under subsection 7(1) or (3) of the Collection Act, for the year will be less than 36 tonnes.
- (2) An application must be sent to the Secretary's postal address.

#### **4.14 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) 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.

#### **4.15 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) 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.

#### **4.16 When must quarterly returns be lodged if exemption not granted or 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.

#### **4.17 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter:
  - (a) the quantity of avocados sold by the producer by retail sale; and
  - (b) the amount of levy payable on the avocados; and
  - (c) the amount of levy paid by the producer for the avocados; and
  - (d) the quantity of avocados processed by the producer.

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.

#### **4.18 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 fresh avocados and processing avocados bought at the first point of sale by the first purchaser or agent; and
  - (b) the amount of levy payable on fresh avocados and processing avocados; and
  - (c) the amount of levy paid by the first purchaser or agent for fresh avocados and processing avocados.

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.

#### **4.19 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 avocados exported by the exporter or agent; and

Clause 4.20

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- (b) the amount of charge payable on the avocados; and
- (c) the amount of charge paid by the exporter or agent for the avocados.

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.

#### 4.20 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 avocados and processing avocados sold by the selling agent; and
  - (b) the amount of levy payable on fresh avocados and processing avocados; and
  - (c) the amount of levy paid by the selling agent for fresh avocados and processing avocados.

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.

#### 4.20A What records must be kept—processors

- (1) A processor must keep records showing, in respect of each quarter:
- (a) the quantity of avocados processed by the processor; and
  - (b) the amount of levy payable on the avocados; and
  - (c) the amount of levy paid by the processor for the avocados; and
  - (d) the quantity of avocados bought by the processor.

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.

#### 4.21 Review of decisions

A person may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary:

- (a) refusing under paragraph 4.14(1)(a) to grant an exemption; or
- (b) refusing under paragraph 4.15(1)(a) to continue an exemption.

## Part 5—Cherries

### 5.1 Application

This Part applies to cherries.

### 5.2 Definitions for Part 5

In this Part:

**cherry** means a fruit of the species *Prunus avium*.

**exporter** means a producer of cherries for 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.

**retail sale** means the sale of cherries by the producer of the cherries that is not a sale:

- (a) to a first purchaser, a buying agent, an export agent or an exporter; or
- (b) through a selling agent.

Note 1: Cherries are chargeable horticultural products—see Part 5 of Schedule 10 to the Customs Charges Regulations.

Note 2: Cherries are leviable horticultural products—see Part 5 of Schedule 15 to the Excise Levies Regulations.

### 5.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for cherries is:

- (a) the period of 14 months beginning on 1 February 2011; and
- (b) the period of 12 months beginning on 1 April in a subsequent year.

### 5.4 What is not a process

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

- (a) cleaning;
- (b) sorting;
- (c) grading;
- (d) packing.

### 5.5 Who is a producer

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

Clause 5.6

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- 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.

### 5.6 When is charge or levy due for payment

For section 6 of the Collection Act, charge or levy payable on cherries for a levy year is due for payment on the last day on which return for the levy year must be lodged under clause 5.8.

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

### 5.7 Who must lodge a return

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

- (a) a first purchaser who, in the course of business, buys cherries (other than by retail sale) in the levy year;
- (b) a buying agent who, in the course of business, buys cherries (other than by retail sale) in the levy year;
- (c) a selling agent who sells cherries in the levy year;
- (d) a producer who sells cherries by retail sale in the levy year;
- (e) an exporter who exports cherries in the levy year;
- (f) an exporting agent who exports cherries in the levy year.

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

### 5.8 When must a return be lodged

- (1) A return for the levy year beginning on 1 February 2011 must be lodged on or before 28 April 2012.
- (2) A return for a levy year beginning on 1 April must be lodged on or before 28 April in the following levy year.

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

### 5.9 What must be included in a return

In addition to the information required by regulation 10, a return for a levy year must state, in respect of the levy year:

- (a) for cherries that were bought or sold (other than cherries that are exempt from levy) by the person lodging the return:
  - (i) the quantity, in kilograms, of the cherries; and
  - (ii) the amount of levy payable for the cherries; and



- (iii) the amount of levy paid by the person for the cherries; and
- (b) for cherries that were exported (other than cherries that are exempt from charge) by the person lodging the return:
  - (i) the quantity, in kilograms, of the cherries; and
  - (ii) the amount of charge payable for the cherries; and
  - (iii) the amount of charge paid by the person for the cherries; and
- (c) the total amount of levy and charge payable for the cherries; and
- (d) the total amount of levy and charge paid by the person for the cherries.

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

### **5.10 What records must be kept**

- (1) A producer and a person mentioned in clause 5.7 must keep records showing, in respect of each levy year, the details mentioned in subclauses (2) and (4).

Penalty: 10 penalty units.

- (2) For cherries bought or sold in a levy year (by retail sale or otherwise) by the person keeping the records, the details for subclause (1) are:
  - (a) the quantities, in kilograms, of the cherries bought or sold; and
  - (b) the details mentioned in subclause (3) b:
    - (i) each person from whom cherries were bought; and
    - (ii) each person to whom cherries were sold; and
  - (c) the amount of levy payable for the cherries at the first point of sale; and
  - (d) the amount of levy paid by the person for the cherries at the first point of sale; and
  - (e) the amount of levy payable on the cherries sold by retail sale; and
  - (f) the amount of levy paid by the person for the cherries sold by retail sale.
- (3) For paragraph (2)(b), the details are:
  - (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.
- (4) For cherries exported in a levy year, the details for subclause (1) are:
  - (a) the quantity of cherries exported by the person; and
  - (b) for each person to whom cherries were exported:
    - (i) the person's full name; and
    - (ii) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the amount of charge payable for the cherries; and
  - (d) the amount of charge paid by the person for the cherries.
- (5) An offence under subclause (1) is an offence of strict liability.

**Schedule 22** Horticultural products  
**Part 5** Cherries

Clause 5.10

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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.

## Part 6—Chestnuts

### 6.1 Application

This Part applies to chestnuts.

### 6.2 Definitions for Part 6

In this Part:

**chestnut** means a peeled or unpeeled edible chestnut of the genus *Castanea* grown in Australia.

**deal** means sell, buy or export.

**exporter**, for chestnuts, means the producer of the chestnuts 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.

**retail sale**, for a sale of chestnuts by a producer, means a sale by the producer of the chestnuts except a sale to a first purchaser or through a selling agent, a buying agent or an exporting agent.

Note 1: Chestnuts are chargeable horticultural products—see Part 6 of Schedule 10 to the Customs Charges Regulations.

Note 2: Chestnuts are leviable horticultural products—see Part 6 of Schedule 15 to the Excise Levies Regulations.

### 6.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for chestnuts is a financial year.

### 6.4 Who is a producer

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

### 6.5 Liability of intermediaries—exporting agents

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

Note 1: 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.

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.

### 6.6 When charge or levy is due for payment—persons who lodge quarterly returns

For section 6 of the Collection Act, levy or charge payable for chestnuts for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 6.8—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 6.8—on the last day of that period.

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

### 6.7 Persons who must lodge a quarterly return

(1) The following persons must lodge a return for a quarter:

- (a) a producer who sells chestnuts by retail sale in the quarter;
- (b) a first purchaser who buys chestnuts in the quarter;
- (c) a buying agent who buys chestnuts in the quarter;
- (d) a selling agent who sells chestnuts in the quarter;
- (e) an exporter who exports chestnuts in the quarter;
- (f) an exporting agent who exports chestnuts in the quarter.

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

(2) However, a person mentioned in subclause (1) is not required to lodge quarterly returns in a levy year if:

- (a) the person has applied, under clause 6.9A, for an exemption for the year and has not received notice of the Secretary's decision; or
- (b) the Secretary has granted the person an exemption for the year under paragraph 6.9C; or
- (c) the Secretary has continued the person's exemption under paragraph 6.9D; or
- (d) the person has not received notice, under paragraph 6.9D(1)(b), of the Secretary's decision made under paragraph 6.9D(1)(a).

## **6.8 When a quarterly return must be lodged**

A return for a quarter 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.

### **6.8A 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 chestnuts for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 6.8C.

### **6.8B Persons who must lodge an annual return**

A return for a levy year must be lodged by a person that is:

- (a) mentioned in subclause 6.7(1); and
- (b) exempt from lodging a quarterly return in the levy year.

### **6.8C When an annual return must be lodged**

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

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

## **6.9 What must be included in a return**

In addition to the information required by regulation 10, a return must state, for the quarter or levy year:

- (a) the quantity of chestnuts dealt with by the person lodging the return; and
- (b) the amount of levy payable for the chestnuts; and
- (c) the amount of levy paid by the person for the chestnuts; and
- (d) the amount of charge payable for the chestnuts; and
- (e) the amount of charge paid by the person for the chestnuts.

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

### **6.9A Persons who may apply for 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 total amount of charge and levy on chestnuts that the person will pay, or be likely to pay, in the levy year will not exceed \$500.

### **6.9B Form of application for exemption**

- (1) An application for exemption must include:
  - (a) the applicant's personal details; and

Clause 6.9C

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- (b) a statement by the applicant that the applicant:
    - (i) is liable to pay charge or levy on chestnuts in the levy year; or
    - (ii) may become liable to pay charge or levy on chestnuts in the levy year;  
or
    - (iii) is liable to pay an amount under subsection 7(1) or (3) of the Collection Act, in relation to chestnuts; or
    - (iv) may become liable to pay an amount under subsection 7(1) or (3) of the Collection Act, in relation to chestnuts; and
  - (c) a statement by the applicant that the applicant believes that the total amount of charge and levy on chestnuts that the applicant will pay, or be likely to pay, in the levy year will not exceed \$500.
- (2) An application must be sent to the Secretary's postal address.

**6.9C 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 an exemption from the requirement to lodge quarterly returns for a levy year, the Secretary must have regard to:
  - (a) the amount of any of the following payable by the applicant for the preceding levy year:
    - (i) charge or levy;
    - (ii) intermediary amount; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to be liable to pay under subsection 7(1), (2) or (3) of the Collection Act in the levy year to which the application relates.

**6.9D Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns in a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving that return:
  - (a) decide whether to continue the exemption for the levy year; and
  - (b) give the person written notice of the decision.
- (2) In deciding whether to continue a person's exemption, the Secretary must have regard to:
  - (a) the amount of any of the following payable by the applicant for the preceding levy year:
    - (i) charge or levy;
    - (ii) intermediary amount; and

- (b) any information that is available to the Secretary about the amount of liability the applicant is likely to be liable to pay under subsection 7(1), (2) or (3) of the Collection Act in the next levy year.

### **6.9E When a quarterly return must be lodged if exemption refused**

If a person receives notice of a refusal to grant an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in the levy year in accordance with one of the following paragraphs:

- (a) if the quarter ended before the person received the notice—within 28 days of receiving the notice;
- (b) in any other case—within 28 days after the end of the quarter.

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

### **6.9F When a quarterly return must be lodged if exemption not continued**

If a person receives notice of a refusal to continue an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in the levy year in accordance with one of the following paragraphs:

- (a) if the quarter ended before the person received the notice—within 28 days of receiving the notice;
- (b) in any other case—within 28 days after the end of the quarter.

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

### **6.10 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter:
  - (a) the quantity, in kilograms, of chestnuts sold by the producer by retail sale; and
  - (b) the amount of levy payable for the chestnuts; and
  - (c) the amount of levy paid by the producer for the chestnuts.

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.

### **6.11 What records must be kept—first purchasers**

- (1) A first purchaser must keep records that show, for each purchase of chestnuts by the first purchaser directly from a producer:
  - (a) the details of the producer mentioned in clause 6.16; and
  - (b) the date the first purchaser received the chestnuts; and
  - (c) the quantity, in kilograms, of chestnuts received; and

Clause 6.12

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- (d) the amount of levy payable for the chestnuts; and
- (e) the amount deducted for payment of the levy in relation to the chestnuts from money:
  - (i) received by the first purchaser on behalf of the producer; or
  - (ii) payable by the first purchaser to the producer; and
- (f) the amount of levy paid by the first purchaser for the chestnuts.

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.

### 6.12 What records must be kept—buying agents

- (1) A buying agent must keep records that show for each purchase of chestnuts by the buying agent directly from a producer:
- (a) the details of the producer mentioned in clause 6.16; and
  - (b) the date the buying agent bought the chestnuts; and
  - (c) the quantity, in kilograms, of chestnuts bought; and
  - (d) the amount of levy payable for the chestnuts; and
  - (e) the amount deducted for payment of the levy in relation to the chestnuts from money:
    - (i) received by the buying agent on behalf of the producer; or
    - (ii) payable by the buying agent to the producer; and
  - (f) the amount of levy paid by the buying agent for the chestnuts.

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.

### 6.13 What records must be kept—exporters

- (1) An exporter must keep records showing, for each consignment of chestnuts exported by the exporter in a quarter:
- (a) the date the consignment was exported; and
  - (b) the quantity, in kilograms, of chestnuts in the consignment; and
  - (c) the amount of charge payable for the chestnuts; and
  - (d) the amount of charge paid by the exporter for the chestnuts.

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.

#### **6.14 What records must be kept—exporting agents**

- (1) An exporting agent must keep records showing, for each consignment of chestnuts exported by the exporting agent in a quarter:
- (a) the details of the producer mentioned in clause 6.16; and
  - (b) the date the consignment was exported; and
  - (c) the quantity, in kilograms, of chestnuts in the consignment; and
  - (d) the amount of charge payable for the chestnuts; and
  - (e) the amount deducted for payment of the charge in relation to the chestnuts from money:
    - (i) received by the exporting agent on behalf of the producer; or
    - (ii) payable by the exporting agent to the producer; and
  - (f) the amount of export charge paid by the exporting agent for the chestnuts.

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.

#### **6.15 What records must be kept—selling agents**

- (1) A selling agent must keep records that show for each sale of chestnuts by the selling agent in a quarter:
- (a) the details of the producer mentioned in clause 6.16; and
  - (b) the date of the sale; and
  - (c) the quantity, in kilograms, of chestnuts sold; and
  - (d) the amount of levy payable for the chestnuts; and
  - (e) the amount deducted for payment of the levy in relation to the chestnuts from money:
    - (i) received by the selling agent on behalf of the producer; or
    - (ii) payable by the selling agent to the producer; and
  - (f) the amount of levy paid by the selling agent for the chestnuts.

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.

#### **6.16 Details of producer for records**

For paragraphs 6.11(a), 6.12(a), 6.14(a) and 6.15(a), the details are:

- (a) the producer's full name; and

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- (b) the producer's business or residential address (not the address of a post office box or post office bag); and
- (c) the producer's ABN, if any; and
- (d) if the producer is a company and does not have an ABN—its ACN.

## Part 7—Citrus

### 7.1 Application

This Part applies to citrus.

### 7.2 Definitions for Part 7

In this Part:

**box**, in relation to citrus, means:

- (a) a container of a kind:
  - (i) ordinarily used in the Australian horticultural industry for packing citrus; and
  - (ii) ordinarily known in that industry as a bushel box or 30 litre box; or
- (b) if the citrus is not packed in a container of the kind referred to in paragraph (a):
  - (i) in the case of grapefruit—16.67 kilograms; and
  - (ii) in the case of other citrus—20 kilograms.

**citrus** means fruit of any species of the genus *Citrus*, the genus *Fortunella* or any plant originating as a result of hybridisation between, or within, either of these genera and includes the fruit of plants commonly known as calomindin, citrons, cumquats, grapefruit, lemons, limes, mandarins, oranges, pummellos (pomelos), sevilles, tangelos, tangerines and tangors.

**citrus in bulk** means citrus:

- (a) sold in bulk by the producer to a first purchaser or to a buying agent or through a selling agent; or
- (b) used by the producer in the production in Australia of fruit juices or any other processed product.

**class**, for citrus, means any one of the following classes:

- (a) citrus (except oranges) in bulk;
- (b) citrus (except oranges) not in bulk;
- (c) oranges in bulk;
- (d) oranges not in bulk.

**exported in bulk** means exported in a container where the mass of citrus in the container exceeds 30 kilograms.

**oranges** means fruit of:

- (a) the species *Citrus sinensis* L; or
- (b) any plant originating as a result of hybridisation within that species.

**retail sale**, in relation to a sale of citrus by a producer, means a sale of citrus except a sale to a first purchaser or to a buying agent or through a selling agent.

Clause 7.3

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***sold in bulk***, in relation to citrus transported, or to be transported, in a container, means sold where the mass of citrus in the container exceeds 30 kilograms.

***specified amount*** means:

- (a) \$1 000; or
- (b) if an order made under clause 7.21 is in force—the amount specified in the order.

Note 1: Citrus are chargeable horticultural products—see Part 7 of Schedule 10 to the Customs Charges Regulations.

Note 2: Citrus are leviable horticultural products—see Part 7 of Schedule 15 to the Excise Levies Regulations.

### 7.3 What is a levy year

For the definition of ***levy year*** in subsection 4(1) of the Collection Act, a levy year for citrus is a calendar year.

### 7.4 Who is a producer

For paragraph (b) of the definition of ***producer*** in subsection 4(1) of the Collection Act, citrus is 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.

### 7.5 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 citrus for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 7.7.

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

### 7.6 Who must lodge a quarterly return

- (1) The following persons must lodge a return for a quarter:
  - (a) a first purchaser who purchases citrus in the quarter;
  - (b) a buying agent who buys citrus in the quarter;
  - (c) a selling agent who sells citrus in the quarter;
  - (d) a person who exports citrus 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 quarterly returns for a levy year if:
- (a) the person has applied under clause 7.16 for an exemption for the year and has not received notice of the Secretary's decision; or
  - (b) the Secretary has granted the person an exemption for the year under clause 7.18 or has continued the person's exemption under clause 7.19; or
  - (c) the Secretary is required under subclause 7.19 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **7.7 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.

### **7.8 What must be included in a quarterly return—first purchasers and agents**

In addition to the information required by regulation 10, a return for a quarter lodged by a first purchaser, buying agent or selling agent must state, in respect of the quarter:

- (a) the quantity of each class of citrus:
  - (i) bought by the first purchaser or agent for use in the production of fruit juice; or
  - (ii) sold by the first purchaser or agent for use in the production of fruit juice; or
  - (iii) used by the first purchaser or agent in the production of fruit juice; and
- (b) the quantity of each class of citrus:
  - (i) bought by the first purchaser or agent for use in the production of any other processed product; or
  - (ii) sold by the first purchaser or agent for use in the production of any other processed product; or
  - (iii) used by the first purchaser or agent in the production of any other processed product; and
- (c) the quantity of each class of citrus bought, sold or used by the first purchaser or agent for purposes other than use in the production of fruit juice or any other processed product; and
- (d) the amount of levy payable for each quantity of each class of citrus mentioned in paragraphs (a), (b) and (c); and
- (e) the total amount of levy payable for the citrus; and
- (f) the total amount of levy paid by the first purchaser or agent for the citrus.

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

Clause 7.9

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### 7.9 What must be included in a quarterly return—persons who export citrus

In addition to the information required by regulation 10, a return for a quarter lodged by a person who exports citrus must state, in respect of the quarter:

- (a) the quantity of each class of citrus exported by the person; and
- (b) the amount of charge payable for each quantity of citrus exported; and
- (c) the total amount of charge payable for the citrus; and
- (d) the total amount of charge paid by the person for the citrus.

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

### 7.10 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 citrus for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 7.12.

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

### 7.11 Who must lodge an annual return

- (1) A producer must lodge a return for a levy year if, in that levy year:
  - (a) the producer:
    - (i) sold citrus by retail sale; or
    - (ii) used citrus in the production of fruit juice or any other processed product; and
  - (b) the total quantity of citrus so sold or used is not less than 500 boxes.

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

- (2) A first purchaser who is exempt from lodging quarterly returns for a levy year must lodge a return for that levy year if, in that levy year, the first purchaser bought citrus.

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

- (3) A buying agent or selling agent who is exempt from lodging quarterly returns for a levy year must lodge a return for that levy year if, in that levy year, the agent bought or sold citrus.

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

- (4) A person who is exempt from lodging quarterly returns for a levy year must lodge a return for that levy year if, in that levy year, the person exported citrus.

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

### 7.12 When must an annual return be lodged

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

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

### **7.13 What must be included in an annual return—producers**

- (1) In addition to the information required by regulation 10, a return for a levy year lodged by a producer must state, in respect of the levy year:
  - (a) the quantity of each class of citrus sold or used by the producer; and
  - (b) the amount of levy payable for each of those quantities; and
  - (c) the total amount of levy payable for the citrus; and
  - (d) the total amount of levy paid by the producer for the citrus.

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

- (2) This clause does not apply to citrus in respect of which an agreement has been entered into under section 10 or 11 of the Collection Act.

### **7.14 What must be included in an annual return—first purchasers and agents**

- (1) In addition to the information required by regulation 10, a return for a levy year lodged by a first purchaser, buying agent or selling agent must state, in respect of the levy year:
  - (a) the quantity of each class of citrus bought or sold by the first purchaser or agent; and
  - (b) the total of the amounts of levy payable for those quantities; and
  - (c) the amount of levy previously paid by the first purchaser or agent for the citrus; and
  - (d) the net amount of levy payable for all classes of citrus; and
  - (e) the total amount of levy paid by the first purchaser or agent for the citrus.

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

- (2) This clause does not apply to citrus in respect of which an agreement has been entered into under section 10 or 11 of the Collection Act.

### **7.15 What must be included in an annual return—persons who export citrus**

- (1) In addition to the information required by regulation 10, a return for a levy year lodged by a person who exports citrus must state, in respect of the levy year:
  - (a) the quantity of each class of citrus exported by the person; and
  - (b) the amount of charge payable for each quantity; and
  - (c) the total amount of charge payable; and
  - (d) the total amount of charge paid by the person for the citrus.

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

- (2) This clause does not apply to citrus in respect of which an agreement has been entered into under section 10 or 11 of the Collection Act.

### **7.16 Exemption from lodging quarterly returns**

- (1) A first purchaser, buying agent or selling agent may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has

Clause 7.17

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reasonable grounds for believing that the levy payable by the person for the year will be less than the specified amount.

- (2) A person who exports citrus may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the charge payable by the person for the year will be less than the specified amount.

### 7.17 Form of application for exemption

- (1) An application for an exemption must state:
  - (a) the applicant's full name; and
  - (b) the applicant's business or residential address (not the address of a post office box or post office bag); and
  - (c) if the applicant has a post office box or a post office bag address—that address; and
  - (d) the applicant's ABN, if any; and
  - (e) if the applicant is a company and does not have an ABN—its ACN.
- (2) If the applicant is a first purchaser, buying agent or selling agent, the application must include:
  - (a) a statement to the effect that the applicant is a first purchaser, or a buying agent, or a selling agent, who will, or may, incur a liability under subsection 7(1) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than the specified amount.
- (3) If the applicant is a person who exports citrus, the application must include:
  - (a) a statement to the effect that the applicant is a producer or exporting agent who will, or may, incur a liability under subsection 7(3) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than the specified amount.
- (4) An application must be sent to the Secretary's postal address.

### 7.18 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) When deciding whether to grant an exemption, the Secretary must have regard to:
  - (a) the amount of levy or charge payable by the applicant in the preceding 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 under subsection 7(1) or (3) of the Collection Act in the calendar year to which the application relates.

### **7.19 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for that 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 charge payable by the person in the preceding 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 under subsection 7(1) or (3) of the Collection Act in the following levy year.

### **7.20 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 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.

### **7.21 Orders—specified amount**

The Minister may, by order, specify an amount, not exceeding \$5 000, for paragraph (b) of the definition of *specified amount* in clause 7.2.

### **7.22 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter:
  - (a) the quantity of each class of citrus sold by the producer by retail sale; and
  - (b) the quantity of citrus used by the producer in the production of fruit juice; and
  - (c) the quantity of citrus used by the producer in the production of any processed product except fruit juice; and
  - (d) the amount of levy payable on each class of citrus; and
  - (e) the amount of levy paid by the producer for each class of citrus.

Penalty: 10 penalty units.

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- (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.

**7.23 What records must be kept—first purchasers and buying agents**

- (1) A first purchaser or buying agent must keep records showing, in respect of each quarter, for each class of citrus bought:
- (a) the quantity bought by the first purchaser or agent for use in the production of fruit juice; and
  - (b) the quantity bought by the first purchaser or agent for use in the production of any processed product except fruit juice; and
  - (c) the quantity bought by the first purchaser or agent for purposes other than use in the production of fruit juice or any other processed product; and
  - (d) the amount of levy payable on each class of citrus; and
  - (e) the amount of levy paid by the first purchaser or agent for each class of citrus.

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.

**7.24 What records must be kept—selling agents**

- (1) A selling agent must keep records showing, in respect of each quarter, for each class of citrus sold by the agent:
- (a) the quantity sold for use in the production of fruit juice; and
  - (b) the quantity sold for use in the production of any processed product except fruit juice; and
  - (c) the quantity sold for purposes other than use in the production of fruit juice or any other processed product; and
  - (d) the amount of levy payable on each class of citrus; and
  - (e) the amount of levy paid by the agent for each class of citrus.

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.

**7.25 What records must be kept—persons who export citrus**

- (1) A person who exports citrus must keep records showing, in respect of each quarter:
- (a) the quantity of each class of citrus exported by the person; and

- (b) the amount of charge payable on each class of citrus; and
- (c) the amount of charge paid by the person for each class of citrus.

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.

## **7.26 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 7.18(1)(a) to grant an exemption; or
- (b) refusing under paragraph 7.19(1)(a) to continue an exemption.

## Part 8—Custard apples

### 8.1 Application

This Part applies to custard apples.

### 8.2 Definitions for Part 8

In this Part:

**bulk custard apples** means custard apples which are not packed in a standard tray or a standard box.

**custard apple** means a fruit:

- (a) of the species *Annona cherimola*, *Annona muricata*, *Annona reticulata* or *Annona squamosa*; or
- (b) of a hybrid between, or within, any of these species.

**exporter** means a producer of custard apples for the purposes 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.

**retail sale** means a sale of any custard apples by a producer, but does not include a sale to a first purchaser or through a selling agent, a buying agent or an exporting agent.

**standard box** means:

- (a) a box of custard apples, being a box of the kind ordinarily used in the Australian horticultural industry for packing custard apples; or
- (b) if the custard apples are packed in another kind of box—10 kilograms of custard apples.

**standard tray** means:

- (a) a single layer tray of custard apples, being a tray of a kind ordinarily used in the Australian horticultural industry for packing custard apples; or
- (b) if the custard apples are packed in another kind of tray—7 kilograms of custard apples.

Note 1: Custard apples are chargeable horticultural products—see Part 8 of Schedule 10 to the Customs Charges Regulations.

Note 2: Custard apples are leviable horticultural products—see Part 8 of Schedule 15 to the Excise Levies Regulations.

### 8.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for custard apples is a calendar year.

### 8.3A What is not a process

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

- (a) fruit conditioning processes including storage and ripening;
- (b) cleaning;
- (c) sorting;
- (d) grading;
- (e) packing.

### 8.3B Who is a processor

Custard apples 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 processes 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.

### 8.4 Who is a producer

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, custard apples 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.

### 8.5 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 custard apples for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 8.6A.

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

### 8.6 Who must lodge a quarterly return

- (1) The following persons must lodge a return for custard apples for a quarter:
    - (a) a first purchaser who, in the course of business, buys custard apples in the quarter (except by a retail sale);
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Clause 8.6A

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- (b) a buying agent who, in the course of business, buys custard apples in the quarter (except by a retail sale);
- (c) a selling agent who sells custard apples in the quarter;
- (d) an exporter who exports custard apples in the quarter;
- (e) an exporting agent who exports custard apples in the quarter;
- (f) a producer who sells custard apples in the quarter, other than by retail sale or by selling directly to a processor for processing.

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

- (2) However, a person does not have to lodge quarterly returns for a levy year if:
  - (a) the person has applied for an exemption under clause 8.8A 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 the levy year under clause 8.8C, or has continued the person's exemption for the levy year under clause 8.8D; or
  - (c) the Secretary is required, under clause 8.8D, to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### 8.6A When must a quarterly return be lodged

A return for a quarter 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.

### 8.6B 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 custard apples for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 8.7.

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

### 8.6C Who must lodge an annual return

An annual return for a levy year must be lodged by a person who:

- (a) is described in subclause 8.6(1); and
- (b) is exempt from lodging quarterly returns for the levy year under clause 8.8C or 8.8D.

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

### 8.7 When must an annual return be lodged

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

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

## **8.8 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:

- (a) for custard apples bought or sold by the person lodging the return for which levy is payable:
  - (i) the quantity, in kilograms, of the custard apples; and
  - (ii) the amount of levy payable for the custard apples; and
  - (iii) the amount of levy paid for the custard apples; and
- (b) for custard apples exported by the person lodging the return for which charge is payable:
  - (i) the quantity, in kilograms, of the custard apples; and
  - (ii) the amount of charge payable for the custard apples; and
  - (iii) the amount of charge paid for the custard apples; and
- (c) the total amount of levy and charge payable for the custard apples; and
- (d) the total amount of levy and charge paid by the person lodging the return for the custard apples.

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

### **8.8A Exemption from lodging quarterly returns**

A person may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the sum of levy and charge payable by the person for the year is, or is likely to be, less than \$500.

### **8.8B Form of application for exemption**

- (1) An application must include:
  - (a) the following details:
    - (i) the applicant's full name;
    - (ii) the applicant's business or residential address (not the address of a post office box or post office bag);
    - (iii) if the applicant has a post office box or post office bag address—that address;
    - (iv) the applicant's ABN, if any;
    - (v) if the applicant is a company and does not have an ABN—its ACN; and
  - (b) a statement to the effect that the applicant believes that the applicant has incurred, or is likely to incur, a liability to pay levy or charge for the levy year to which the application relates; and
  - (c) a statement to the effect that the applicant believes that the amount of the liability is, or is likely to be, less than \$500.
- (2) An application must be sent to the Secretary's postal address.

### **8.8C 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 to grant an exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of the levy or charge that the applicant is, or is likely to be, liable to pay for the levy year; and
  - (b) the amount of levy or charge that the applicant was liable to pay for the immediately preceding levy year.

### **8.8D Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for the year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) In deciding whether to continue an exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of levy or charge that the person is, or is likely to be, liable to pay for the next levy year; and
  - (b) the amount of levy or charge that the person was liable to pay for the levy year to which the annual return relates.

### **8.8E When must a quarterly return 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 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.

### **8.9 What records must be kept**

- (1) The following persons must keep records showing, for a levy year, the details mentioned in subclause (2):
  - (a) a person mentioned in subclause 8.6(1);
  - (b) a producer.

Penalty: 10 penalty units.

- (2) For subclause (1), the details are:



- (a) the quantities, in kilograms, of custard apples bought, sold (by retail sale or otherwise) or exported by the person keeping the records; and
  - (b) the amount of levy and charge payable on the quantities; and
  - (c) the amount of levy and charge paid by the person keeping the records on the quantities; and
  - (d) the details mentioned in subclause (3) for each person:
    - (i) to whom a person mentioned in subclause (1) sold custard apples, other than by retail sale; and
    - (ii) from whom the person bought custard apples; and
  - (e) the name and business or residential address (not the address of a post office box or post office bag) of each person to whom the person exported custard apples; and
  - (f) the total quantity, in kilograms, of custard apples:
    - (i) sold by the person keeping the records to each person mentioned in subparagraph (d)(i); and
    - (ii) bought by the person keeping the records from each person mentioned in subparagraph (d)(ii); and
    - (iii) exported by the person keeping the records to each person mentioned in paragraph (e).
- (3) For paragraph (2)(d), the details are:
- (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.
- (4) 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.

## 8.10 Review of decisions

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 8.8C(1)(a) to grant an exemption; or
- (b) refusing under paragraph 8.8D(1)(a) to continue an exemption.

## Part 9—Dried vine fruits

### 9.1 Application

This Part applies to dried vine fruits.

### 9.2 Definitions for Part 9

In this Part:

*deal*, for dried vine fruits, means to sell, buy or export the fruits.

*dried vine fruits* means dried grapes.

*exporter*, in relation to dried vine fruits, means the producer of the fruits 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.

*retail sale*, in relation to a sale of dried vine fruits by a producer, means a sale by the producer of the fruits except a sale to a first purchaser or through a selling agent, buying agent or exporting agent.

Note 1: Dried vine fruits are chargeable horticultural products—see Part 9 of Schedule 10 to the Customs Charges Regulations.

Note 2: Dried vine fruits are leviable horticultural products—see Part 9 of Schedule 15 to the Excise Levies Regulations.

### 9.3 What is a levy year

For the definition of levy year in subsection 4(1) of the Collection Act, a levy year for dried vine fruits is a calendar year.

### 9.4 Who is a processor

Paragraph (b) of the definition of *processor* in subsection 4(1) of the Collection Act applies to dried vine fruits.

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 processes 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.

### 9.5 Who is a producer

For paragraph (h) of the definition of *producer* in subsection 4(1) of the Collection Act, dried vine fruits are prescribed.

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- Note 1: Paragraph (h) of the definition of *producer* in subsection 4(1) of the Collection Act provides that, for a product prescribed for that paragraph, *producer* means:
- (a) where a person is the producer of the product and the proprietor of the processing establishment at which the product is processed—that person; or
  - (b) in any other case—the person who was the owner of the product immediately before delivery to a processing establishment.
- 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.

## **9.6 Liability of intermediaries for charge—exporting agents**

For subsection 7(3) of the Collection Act, dried vine fruits are prescribed.

- Note 1: 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 section 15 of the Collection Act in relation to that charge.
- 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.

## **9.7 Liability of intermediaries—exemption for first purchasers, buying agents and selling agents**

Section 7 of the Collection Act does not apply to the following persons if they buy dried vine fruits from, or sell dried vine fruits to, a producer who processes the fruits and sells them otherwise than by retail sale:

- (a) a first purchaser;
- (b) a buying agent;
- (c) a selling agent.

## **9.8 When is charge or levy due for payment—people who lodge monthly returns**

For section 6 of the Collection Act, charge or levy payable for dried vine fruits for a month is due for payment:

- (a) if a return for the month is lodged within the period mentioned in clause 9.10—on the day that the return is lodged; or
- (b) if a return for the month is not lodged within the period mentioned in clause 9.10—on the last day of that period.

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

## **9.9 Who must lodge a monthly return**

- (1) The following persons must lodge a return for a month:
  - (a) a first purchaser who buys dried vine fruits in the month;
  - (b) a buying agent who buys dried vine fruits in the month;
  - (c) a selling agent who sells dried vine fruits in the month;
  - (d) an exporting agent who exports dried vine fruits in the month;

Clause 9.10

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- (e) an exporter who exports dried vine fruits in the month;
- (f) a producer who sells dried vine fruits otherwise than by retail sale in the month.

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

- (2) However, a person does not have to lodge monthly returns for a levy year if:
  - (a) the person has applied under clause 9.15 for an exemption for the year and has not received notice of the Secretary's decision; or
  - (b) the Secretary has granted the person an exemption for the year under clause 9.17, or has continued the person's exemption under clause 9.18; or
  - (c) the Secretary is required under clause 9.18 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### 9.10 When must a monthly return be lodged

A return for a month must be lodged within 1 month and 14 days after the end of the month in which the dried vine fruits cease to be under the control of:

- (a) the person who is required to lodge the return; or
- (b) if the person sells or exports dried vine fruits under an agreement with a processor—the processor.

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

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

For section 6 of the Collection Act, charge or levy payable for dried vine fruits for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 9.13—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 9.13—on that day.

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

### 9.12 Who must lodge an annual return

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

- (a) a producer who sells dried vine fruits by retail sale in the levy year;
- (b) a person who:
  - (i) deals with leviable or chargeable dried vine fruits in the levy year; and
  - (ii) is exempt from lodging monthly returns for the levy year.

Note 1: For offences in relation to returns, see section 24 of the Collection Act.

Note 2: For the circumstances in which a person is exempt from lodging monthly returns for a levy year, see Schedule 22, Part 9, subclause 9.9(2).

### **9.13 When must an annual return be lodged**

A return for a levy year must be lodged on or before 14 February in the following levy year.

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

### **9.14 What must be included in a return**

In addition to the information required by regulation 10, a return for a month or levy year must state, in respect of the month or levy year:

- (a) the levy year in which the dried vine fruits to which the return relates were produced; and
- (b) the total weight of the dried vine fruits dealt with in the month or levy year for which levy or charge is payable; and
- (c) the amount of levy and charge payable for the dried vine fruits; and
- (d) the amount of levy and charge paid by the person lodging the return for dried vine fruits.

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

### **9.15 Persons who may apply for exemption from lodging monthly returns**

A person may apply for an exemption from the requirement to lodge monthly returns for a levy year if the person has reasonable grounds for believing that any of the following will have a total weight of less than 100 tonnes:

- (a) the total weight of dried vine fruits for which the person is liable to pay levy or charge for the levy year;
- (b) the total weight of dried vine fruits for which the person may become liable to pay levy or charge for the levy year;
- (c) the total weight of dried vine fruits for which the person is liable to pay an amount for the levy year under subsection 7(1) or (3) of the Collection Act;
- (d) the total weight of dried vine fruits for which the person may become liable to pay an amount for the levy year under subsection 7(1) or (3) of the Collection Act.

### **9.16 Form of application for exemption**

- (1) An application under clause 9.15 must include:
  - (a) the following details:
    - (i) the applicant's full name;
    - (ii) the applicant's business or residential address (not the address of a post office box or post office bag);
    - (iii) the applicant's ABN, if any;
    - (iv) if the applicant is a company and does not have an ABN—its ACN; and
  - (b) a statement to the effect that:

Clause 9.17

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- (i) the applicant is, or may become, liable to pay levy or charge for the year; or
  - (ii) the applicant is, or may become, liable to pay an amount under subsection 7(1) or (3) of the Collection Act; and
  - (c) a statement to the effect that:
    - (i) the applicant believes that the total weight of dried vine fruits for which the person is, or may become, liable to pay levy or charge for the year will be less than 100 tonnes; or
    - (ii) the applicant believes that the total weight of dried vine fruits for which the person is, or may become, liable to pay an amount under subsection 7(1) or (3) of the Collection Act will be less than 100 tonnes.
- (2) An application must be sent to the Secretary's postal address.

### 9.17 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 an 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) 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.

### 9.18 Continuation of exemption

- (1) If a person who is exempt from lodging monthly 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 charge payable, or the amount payable by the applicant under subsection 7(1) 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 following levy year.

### **9.19 When must monthly returns be lodged if an exemption is not granted or continued**

A person who receives notice of a refusal to grant, or a refusal to continue, an exemption for a levy year must lodge a return for each month in the year:

- (a) if the month ended before the person received the notice—within 28 days after receiving the notice; and
- (b) otherwise—within 14 days of the end of the month in which the dried vine fruits cease to be under the control of:
  - (i) the person who is required to lodge the return; or
  - (ii) if the person sells or exports dried vine fruits under an agreement with a processor—the processor.

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

### **9.20 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each month:
  - (a) the total weight of dried vine fruits sold by the producer by retail sale; and
  - (b) the amount of levy payable on the dried vine fruits; and
  - (c) the amount of levy paid by the producer for the dried vine fruits.

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.

### **9.21 What records must be kept—first purchasers**

- (1) A first purchaser must keep records showing, in respect of each month:
  - (a) the total weight of dried vine fruits bought by the first purchaser; and
  - (b) the amount of levy or charge payable on the dried vine fruits; and
  - (c) the amount of the levy, charge or penalty paid by the first purchaser; and
  - (d) if an amount of money is deducted by the purchaser under subsection 8(1) of the Collection Act from money received by the first purchaser on behalf of a producer or payable by the first purchaser in relation to the dried vine fruits—that amount.

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.

### **9.22 What records must be kept—buying agents**

- (1) A buying agent must keep records showing, in respect of each month:
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- (a) the total weight of dried vine fruits bought by the agent; and
- (b) the amount of levy or charge payable on the dried vine fruits; and
- (c) the amount of the levy, charge or penalty paid by the agent; and
- (d) if an amount of money is deducted by the agent under subsection 8(1) of the Collection Act from money received by the agent on behalf of a producer or payable by the agent in relation to the dried vine fruits—that amount.

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.

### 9.23 What records must be kept—exporters and exporting agents

- (1) An exporter or exporting agent must keep records showing, in respect of each month:
- (a) the total weight of dried vine fruits exported by the exporter or exporting agent; and
  - (b) the amount of levy or charge payable on the dried vine fruits; and
  - (c) the amount of the levy, charge or penalty paid by the exporter or exporting agent; and
  - (d) if an amount of money is deducted by the exporting agent under subsection 8(1) of the Collection Act from money received by the exporting agent on behalf of a producer or payable by the exporting agent in relation to the dried vine fruits—that amount.

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.

### 9.24 What records must be kept—selling agents

- (1) A selling agent must keep records in respect of each month showing:
- (a) the total weight of dried vine fruits sold by the agent; and
  - (b) the amount of levy or charge payable for the dried vine fruits; and
  - (c) the amount of the levy, charge or penalty paid by the agent; and
  - (d) if an amount of money is deducted by the agent under subsection 8(1) of the Collection Act from money received by the agent on behalf of a producer or payable by the agent in relation to the dried vine fruits—that amount.

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.

### **9.25 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 9.17(1)(a) to grant an exemption; or
- (b) refusing under paragraph 9.18(1)(a) to continue an exemption.

## Part 10—Macadamia nuts

### 10.1 Application

This Part applies to macadamia nuts.

### 10.2 Definitions for Part 10

In this Part:

**buy** does not include buy in a retail transaction.

**chargeable macadamia nuts** means macadamia nuts that are not exempt from charge under subclause 2(2) of Schedule 10 to the Customs Charges Act or clause 10.2 of Part 10 of Schedule 10 to the Customs Charges Regulations.

**deal**, for macadamia nuts, means deliver, take delivery of, process, export, buy or sell.

**default recovery rate** is 50%.

**dried kernel**, for macadamia nuts, means macadamia nut kernels that have been artificially partly dried.

**exporter** means the producer 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.

**in shell**, for macadamia nuts, means after dehusking but before kernel extraction.

**leviable macadamia nuts** means macadamia nuts that are not exempt from levy under subclause 2(3) of Schedule 15 to the Excise Levies Act or clause 10.2 of Part 10 of Schedule 15 to the Excise Levies Regulations.

**macadamia nut** means a nut of the species *Macadamia integrifolia* or *Macadamia tetraphylla* or a hybrid of those species and includes macadamia nut in shell, as extracted kernel or as dried kernel.

**return period** means:

- (a) for macadamia nuts dealt with before 1 January 2000—the period:
  - (i) beginning on 1 January and ending at the end of 30 June in a year; or
  - (ii) beginning on 1 July and ending at the end of 31 December in a year;or
- (b) for macadamia nuts dealt with on or after 1 January 2000—a calendar month.

**sell** includes sell by retail sale.

- Note 1: Macadamia nuts are chargeable horticultural products—see Part 10 of Schedule 10 to the Customs Charges Regulations.
- Note 2: Macadamia nuts are leviable horticultural products—see Part 10 of Schedule 15 to the Excise Levies Regulations.

### 10.3 What is a levy year

For the definition of *levy year* in subsection 4(1) of the Collection Act, a levy year for macadamia nuts is a calendar year.

### 10.4 What is not a process

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

- (a) drying;
- (b) dehusking;
- (c) on-farm grading.

### 10.5 Who is a processor

Paragraph (b) of the definition of *processor* in subsection 4(1) of the Collection Act applies to macadamia nuts.

- 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 processes 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.

### 10.6 Who is a producer

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, macadamia nuts 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.

### 10.7 Liability of intermediaries—processors

Paragraph 7(2)(b) of the Collection Act applies to macadamia nuts.

- 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
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Clause 10.8

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of the producer, any levy due for payment on or in relation to the product that remains unpaid by the producer, any penalty for late payment imposed by section 15 of the Collection Act that is payable in relation to that levy.

### 10.8 Liability of intermediaries—exporting agents

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

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

Note 2: Under paragraph (g) of the definition of *producer* in subsection 4(1) of the Collection Act, the *producer* is taken to be the person who exports the product from Australia.

### 10.9 When is levy or charge due for payment

Levy or charge payable on macadamia nuts for a return period is due for payment:

- (a) if a return for the return period is lodged within the relevant period mentioned in clause 10.11—on the day that the return is lodged; or
- (b) if a return for the return period is not lodged within the relevant period mentioned in clause 10.11—on the last day of that period.

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

### 10.10 Who must lodge a return

A person must lodge a return for a return period if the person dealt with leviable or chargeable macadamia nuts in the return period.

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

### 10.11 When must a return be lodged

- (1) For macadamia nuts dealt with before 1 January 2000, a return must be lodged:
  - (a) for nuts dealt with in a return period ending at the end of 30 June in a levy year—before 16 September in that year; and
  - (b) for nuts dealt with in a return period ending at the end of 31 December in a levy year—before 16 March in the following levy year.

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

- (2) For macadamia nuts dealt with on or after 1 January 2000, a return must be lodged within 1 month and 28 days after the last day of the return period in which the nuts were dealt with.

Examples for subclause (2)

- 1 A return for macadamia nuts dealt with in January 2000 must be lodged not later than 28 March 2000.
- 2 A return for macadamia nuts dealt with in February 2000 must be lodged not later than 28 April 2000.

Note 1: For offences in relation to returns, see section 24 of the Collection Act.

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Note 2: For macadamia nuts dealt with on or after 1 January 2000, the return period is a calendar month, see clause 10.2.

### 10.12 What must be included in a return

- (1) In addition to the information required by regulation 10, a return must state, in respect of the return period:
  - (a) if the person making the return has dealt in dried kernels of macadamia nut during that period and has recorded the actual quantity of dried kernels dealt with—the actual quantities of dried kernels of leivable macadamia nuts and of chargeable macadamia nuts sold by the person during that period; or
  - (b) if the person has not recorded the actual quantity—the deemed quantities of dried kernels of leivable macadamia nuts and of chargeable macadamia nuts sold by the person during that period.
- (2) For paragraph (1)(b), a person works out the deemed quantity of dried kernels for a quantity of macadamia nuts in shell by multiplying the quantity of macadamia nuts in shell by either:
  - (a) the default recovery rate; or
  - (b) the rate calculated using:

$$\frac{B}{A}$$

where:

**B** is the weight of the kernels in the sample after being removed and dried to 1.5% moisture content.

**A** is the weight of a sample of the quantity of macadamia nuts in shell.

- (2A) For the formula in subclause (2), the sample of nuts must weigh at least 500 g and have a moisture content of 10%.
- (3) As well as the information required in subclause (1), a return must state, in respect of the return period:
  - (a) the amount of levy payable on the quantity of leivable macadamia nuts dealt with; and
  - (b) the amount of levy paid by that person on leivable macadamia nuts; and
  - (c) the amount of charge payable on chargeable macadamia nuts dealt with; and
  - (d) the amount of charge paid by that person on chargeable macadamia nuts.

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

- (4) A person who is the proprietor of more than 1 processing establishment must lodge a single return containing all the details mentioned in subclause (1) for each processing establishment of which the person is the proprietor.

### 10.13 What records must be kept—producers

- (1) A producer must keep records showing, in respect of each return period:
  - (a) the details for leviable macadamia nuts mentioned in subclause (2); and
  - (b) the details for macadamia nuts delivered by the producer to an exporting agent mentioned in subclause (3); and
  - (c) the details for macadamia nuts sold by the producer by retail sale mentioned in subclause (4); and
  - (d) the quantity of leviable macadamia nuts and chargeable macadamia nuts dealt with by the producer in a way not involving delivery to a processing establishment or exporting agent, export or retail sale; and
  - (e) the amount of levy paid by the producer on the nuts mentioned in paragraph (d).

Penalty: 10 penalty units.

- (2) For leviable macadamia nuts delivered by the producer to a processing establishment, the details are:
  - (a) the name and business address of each processing establishment to which the producer delivered macadamia nuts (not a post office box or post office bag); and
  - (b) if the postal address of the establishment differs from the business address—the postal address; and
  - (c) the establishment's ABN, if any; and
  - (d) if the establishment is a company and does not have an ABN—its ACN; and
  - (e) the quantity of macadamia nuts delivered to each establishment; and
  - (f) the total amount of levy payable on the macadamia nuts; and
  - (g) the total amount of levy paid by the producer for the macadamia nuts.
- (3) For macadamia nuts delivered by the producer to an exporting agent, the details are:
  - (a) the name and business or residential address of each exporting agent to whom the producer delivered macadamia nuts (not the address of a post office box or post office bag); and
  - (b) if the agent's postal address differs from the business or residential address—the postal address; and
  - (c) the agent's ABN, if any; and
  - (d) if the agent is a company and does not have an ABN—its ACN; and
  - (e) the quantity of macadamia nuts delivered to each exporting agent; and
  - (f) the total amount of levy payable on the macadamia nuts; and
  - (g) the total amount of levy paid by the producer for the macadamia nuts.
- (4) For macadamia nuts sold by the producer by retail sale, the details are:
  - (a) the quantity of leviable macadamia nuts so sold; and
  - (b) the amount of levy payable on the leviable macadamia nuts; and
  - (c) the amount of levy paid by the producer on the leviable macadamia nuts.

- (5) 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.

#### **10.14 What records must be kept—exporters**

- (1) An exporter must keep records showing, in respect of each return period:
- (a) the quantity of chargeable macadamia nuts exported by the exporter; and
  - (c) the amount of charge payable on the macadamia nuts; and
  - (d) the amount of charge paid by the exporter on the macadamia nuts.

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.

#### **10.15 What records must be kept—persons other than producers and exporters**

- (1) A person who, in a capacity other than producer or exporter, dealt in macadamia nuts with a producer in a return period must keep records showing, in respect of the return period:
- (a) the personal details for the producer; and
  - (b) the quantity of leviable macadamia nuts and chargeable macadamia nuts dealt with by the person; and
  - (d) the amount of levy payable on any leviable macadamia nuts dealt with by the person; and
  - (e) the amount of charge payable on any chargeable macadamia nuts dealt with by the person; and
  - (f) the amount deducted for payment of charge and levy from money:
    - (i) received by the person on behalf of the producer; or
    - (ii) payable by the person to the producer; and
  - (g) the amount of charge paid by the person on the macadamia nuts; and
  - (h) the amount of levy paid by the person on the macadamia nuts.

Penalty: 10 penalty units.

Note: *Personal details* is defined in clause 1.1.

- (2) A person who is the proprietor of more than 1 processing establishment must keep separate records for each processing establishment at which macadamia nuts are dealt with.

Penalty: 10 penalty units.

- (3) An offence under subclause (1) or (2) 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.

## Part 11—Nashi

### 11.1 Application

This Part applies to nashi.

### 11.2 Definitions for Part 11

In this Part:

**box**, for nashi, means:

- (a) a container of a kind:
  - (i) ordinarily used in the Australian horticultural industry for packing nashi; and
  - (ii) ordinarily known in that industry as a bushel box or 30 litre box; or
- (b) if the nashi are not packed in a container of the kind referred to in paragraph (a)—18 kilograms of nashi.

**class**, for nashi, means one of the following classes of nashi:

- (a) nashi, other than juicing nashi or processing nashi;
- (b) juicing nashi;
- (c) processing nashi.

**fruit juice** includes nashi juice.

**juicing nashi** means nashi:

- (a) sold by the producer to a buying agent or a first purchaser, or through a selling agent, for use in the production in Australia of fruit juice; or
- (b) used by the producer in the production in Australia of fruit juice.

**nashi** means fruit of the species *Pyrus pyrifolia*.

**processing nashi** means nashi:

- (a) sold by the producer to a buying agent or a first purchaser, or through a selling agent, for use in the production in Australia of a processed product other than fruit juice; or
- (b) used by the producer in the production in Australia of a processed product other than fruit juice.

**retail sale**, for a sale of nashi by a producer, means a sale by the producer of the nashi except a sale to a buying agent or a first purchaser or through a selling agent.

**specified amount** means:

- (a) \$1 000; or
- (b) if an order under clause 11.20 is in force—the amount specified in the order.



**tray**, for nashi, means:

- (a) a container of a kind:
  - (i) ordinarily used in the Australian horticultural industry for packing nashi; and
  - (ii) ordinarily known in that industry as a single layer tray; or
- (b) if the nashi are not packed in a container referred to in paragraph (a)—4 kilograms of nashi.

Note 1: Nashi are chargeable horticultural products—see Part 11 of Schedule 10 to the Customs Charges Regulations.

Note 2: Nashi are leviable horticultural products—see Part 11 of Schedule 15 to the Excise Levies Regulations.

### 11.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for nashi is a calendar year.

### 11.4 Who is a producer

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

### 11.5 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 nashi for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 11.7.

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

### 11.6 Who must lodge a quarterly return

- (1) The following persons must lodge a return for a quarter:
  - (a) a first purchaser who purchases nashi in the quarter;
  - (b) a buying agent who buys nashi in the quarter;
  - (c) a selling agent who sells nashi in the quarter;
  - (d) a person who exports nashi in the quarter.

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

Clause 11.7

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- (2) However, a person does not have to lodge quarterly returns for a levy year if:
- (a) the person has applied under clause 11.15 for an exemption for the year and has not received notice of the Secretary's decision; or
  - (b) the Secretary has granted the person an exemption for the year under clause 11.17, or has continued the person's exemption under clause 11.18; or
  - (c) the Secretary is required under clause 11.18 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### 11.7 When must a quarterly return be lodged

A return for a quarter 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.

### 11.8 What must be included in a quarterly return

In addition to the information required by regulation 10, a return for a quarter must state, in respect of the quarter:

- (a) if the person lodging the return is a first purchaser, buying agent or selling agent:
  - (i) the quantity of each class of nashi bought, sold or used by the person; and
  - (ii) the amount of levy payable for each of those quantities; and
  - (iii) the total of the amounts of levy payable for the nashi; and
  - (iv) the total amount of levy paid by the person for the nashi.
- (b) if the person lodging the return has exported nashi:
  - (i) the quantity of nashi exported by the person; and
  - (ii) the amount of charge payable for the nashi; and
  - (iii) the amount of charge paid by the person for the nashi.

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

### 11.9 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 nashi for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 11.11.

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

### 11.10 Who must lodge an annual return

- (1) A producer must lodge an annual return for a levy year if, in that levy year:
- (a) the producer:
    - (i) sold nashi by retail sale; or
    - (ii) used juicing nashi; or

- (iii) used processing nashi; and
- (b) the total quantity of those nashi, juicing nashi and processing nashi is not less than 500 boxes.

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

- (2) A first purchaser who is exempt from the requirement to lodge quarterly returns must lodge an annual return for a levy year if in that levy year the first purchaser bought any nashi.

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

- (3) A buying agent or selling agent who is exempt from the requirement to lodge quarterly returns must lodge an annual return for the levy year if, in that levy year the agent bought or sold any nashi.

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

- (4) A person who is exempt from the requirement to lodge quarterly returns for a levy year must lodge an annual return for the year if in that year the person exported any nashi.

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

### **11.11 When must an annual return be lodged**

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

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

### **11.12 What must be included in an annual return—producers**

In addition to the information required by regulation 10, a return for a levy year lodged by a producer must state, in respect of the levy year:

- (a) the quantity of each class of nashi sold or used by the producer; and
- (b) the amount of levy payable for each of those quantities; and
- (c) the sum of the amounts of levy payable; and
- (d) the total amount of levy paid by the producer for the nashi.

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

### **11.13 What must be included in an annual return—first purchasers and agents**

In addition to the information required by regulation 10, a return for a levy year lodged by a first purchaser, buying agent or selling agent must state, in respect of the levy year:

- (a) the quantity of each class of nashi bought or sold by the first purchaser or agent in that year; and
- (b) the total of the amounts of levy payable for those quantities; and
- (c) the amount of levy previously paid by the first purchaser or agent in that levy year, if any; and
- (d) the net amount of levy payable for all classes of that nashi; and

Clause 11.14

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- (e) the net amount of levy paid by the first purchaser or agent for all classes of that nashi.

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

**11.14 What must be included in an annual return—persons who export nashi**

In addition to the information required by regulation 10, a return for a levy year lodged by a person who exported nashi must state, in respect of the levy year:

- (a) the quantity of nashi exported by the person; and
- (b) the amount of charge payable for the nashi; and
- (c) the amount of charge paid by the person for the nashi.

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

**11.15 Exemption from lodging quarterly returns**

- (1) A first purchaser, buying agent or selling agent may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the levy payable by the person for the year will be less than the specified amount.
- (2) A person who exports nashi in a levy year may apply for exemption from the requirement to lodge quarterly returns for the year if the person has reasonable grounds for believing that the charge payable by the person for the year will be less than the specified amount.

**11.16 Form of application for exemption**

- (1) An application for an exemption must state:
  - (a) the applicant's full name; and
  - (b) the applicant's business or residential address (not the address of a post office box or post office bag); and
  - (c) if the applicant has a post office box or a post office bag address—that address; and
  - (d) the applicant's ABN, if any; and
  - (e) if the applicant is a company and does not have an ABN—its ACN.
- (2) If the applicant is a first purchaser, buying agent or selling agent, the application must include:
  - (a) a statement to the effect that the applicant is a first purchaser, or a buying agent, or a selling agent, who will, or may, incur a liability under subsection 7(1) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than the specified amount.
- (3) If the applicant is a person who exports nashi, the application must include:

- (a) a statement to the effect that the applicant is a producer or exporting agent who will, or may, incur a liability under subsection 7(3) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than the specified amount.
- (4) An application must be sent to the Secretary's postal address.

### **11.17 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 an exemption, the Secretary must have regard to:
- (a) the amount of levy or charge payable by the applicant in the preceding 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 under subsection 7(1) or (3) of the Collection Act in the levy year to which the application relates.

### **11.18 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
- (a) decide whether to continue the exemption for the next 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 charge payable by the person in the preceding 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 under subsection 7(1) or (3) of the Collection Act in the following levy year.

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

### **11.19 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 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.

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

### 11.20 Orders—specified amount

The Minister may, by order, specify an amount, not exceeding \$5 000, for paragraph (b) of the definition of *specified amount* in clause 11.2.

### 11.21 What records must be kept—producers

- (1) A producer must keep records showing, in respect of each quarter:
  - (a) the quantity of each class of nashi used by the producer or sold by the producer by retail sale; and
  - (b) the amount of levy payable on each class of nashi sold by the producer by retail sale; and
  - (c) the amount of levy paid by the producer for each class of nashi sold by retail sale.

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.

### 11.22 What records must be kept—first purchasers

- (1) A first purchaser must keep records showing, in respect of each quarter:
  - (a) the quantity of each class of nashi bought by the first purchaser from a producer; and
  - (b) the amount of levy payable on each class of nashi bought from a producer; and
  - (c) the amount of levy paid by the first purchaser for each class of nashi bought from a producer.

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.

### 11.23 What records must be kept—agents

- (1) A buying agent and a selling agent must keep records showing, in respect of each quarter:
  - (a) the quantity of each class of nashi bought or sold by the agent; and
  - (b) the amount of levy payable on each class of nashi so bought or sold; and
  - (c) the amount of levy paid by the agent for each class of nashi so bought or sold.

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.

### **11.24 What records must be kept—persons who export nashi**

- (1) A person who exports nashi must keep records showing, in respect of each quarter:

- (a) the quantity of nashi exported by the person; and
- (b) the amount of charge payable on the nashi so exported; and
- (c) the amount of charge paid by the person for the nashi so exported.

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.

### **11.25 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing, under paragraph 11.17(1)(a) to grant an exemption; or
- (b) refusing, under paragraph 11.18(1)(a) to continue an exemption.

## Part 12—Nursery products

### 12.1 Application

This Part applies to nursery products.

### 12.2 Definitions for Part 12

In this Part:

**contact details**, for a person, means:

- (a) the person's full name; and
- (b) the person's business or residential address (not the address of a post office box or a post office bag); and
- (c) the person's ABN, if any; and
- (d) if the person is a company and does not have an ABN—the person's ACN.

**container** means any container that is designed:

- (a) for use in the production or preparation of a nursery product for sale or for use in the production of other goods; and
- (b) to be the immediate container of the nursery product.

**landed cost**, in relation to containers purchased from an overseas seller by a producer, means the total amount paid by the producer to take possession of the containers, including the following:

- (a) the price of the containers;
- (b) taxes or charges relating to the containers paid in a foreign country;
- (c) the cost of transporting the containers to Australia;
- (d) the cost of insurance associated with the transportation of the containers;
- (e) customs agent's fees incurred for the transportation or importation of the containers;
- (f) other costs incurred by the producer in taking possession of the containers in Australia;

but does not include the cost of delivering the containers to the producer in Australia or any other costs incurred after the producer takes possession of the containers.

**overseas seller** means a seller who is in a foreign country.

**potted plant** means a nursery product in a growing medium in a container.

**seller** means a person who sells containers.

### 12.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for potted plants is a financial year.



## 12.4 Who is a producer

For paragraph (e) of the definition of *producer* in subsection 4(1) of the Collection Act:

- (a) nursery products are prescribed; and
- (b) a person is taken to be the producer of nursery products if:
  - (i) the person places nursery products in a growing medium in containers; or
  - (ii) the person buys containers on behalf of a person who places nursery products in a growing medium in containers.

Note: Paragraph (e) of the definition of *producer* in subsection 4(1) of the Collection Act provides that, for a product prescribed for that paragraph, *producer* means the person who, under the regulations, is to be taken to be the producer of the product.

## 12.5 Containers are prescribed goods

For paragraph (a) of the definition of *prescribed goods or services* in subsection 4(1) of the Collection Act, the containers in which nursery products in a growing medium are placed are goods used in subjecting those nursery products to a process in the course of:

- (a) their production or their preparation for sale; or
- (b) their use in the production of other goods.

Note: Paragraph (a) of the definition of *prescribed goods or services* in subsection 4(1) of the Collection Act provides that *prescribed goods or services*, for a collection product of a particular kind, means goods or services identified by the regulations as goods or services used in subjecting those products to a process in the course of:

- (a) their production or their preparation for sale; or
- (b) their use in the production of other goods.

## 12.6 When levy or an amount on account of levy is due for payment

- (1) For subsection 9(1) of the Collection Act, if:
  - (a) a seller who is in Australia sells containers to a producer; and
  - (b) the producer pays the seller an amount on account of levy payable for the containers, or any penalty imposed by section 15 of the Collection Act that is payable in relation to the levy;

the seller must, within 21 days after the end of the quarter in which the seller received the amount, pay that amount to the Commonwealth.

Note: Subsection 9(1) of the Collection Act provides that a seller who receives an amount on account of levy or penalty from the person to whom the containers were sold must pay that amount to the Commonwealth within a prescribed period after receipt of that amount.

- (2) For subsection 9(2) of the Collection Act, if a producer buys containers from a seller who is in Australia, the producer must, within 3 months after the end of the month in which the producer bought the containers, pay the seller an amount on account of:
  - (a) levy payable for the containers; and

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- (b) any penalty imposed by section 15 of the Collection Act that is payable in relation to the levy.

Note: Subsection 9(2) of the Collection Act provides that a person to whom a container is sold must, within a prescribed period after the purchase of the container, pay the seller an amount on account of levy and any penalty imposed by section 15 of the Collection Act.

- (3) For section 6 of the Collection Act, if a producer buys containers from an overseas seller, the producer must, within 21 days after the end of the quarter in which the producer becomes entitled to take possession of the containers, pay levy payable for the containers to the Commonwealth.

### 12.7 Who must lodge a return

A person must lodge a return for a quarter if:

- (a) subsection 9(1) of the Collection Act applies to the person in the quarter; or  
(b) in the case of a producer who buys containers from an overseas seller, the producer becomes entitled to take possession of the containers in the quarter.

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

### 12.8 When must a return be lodged

A return for a quarter must be lodged within 21 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.

### 12.9 What must be included in a return

- (1) In addition to the information required by regulation 10, a return by a seller for a quarter must state, in respect of the quarter:
- (a) the amount received by the seller from the sale of containers, less any amount attributable to the sale of containers to which paragraph 9(3)(a) or (c) of the Collection Act applies; and
- (b) the total amount on account of levy received by the seller in accordance with subclause 12.6(2); and
- (c) for each amount on account of levy received by the seller from a producer after the end of the period mentioned in subclause 12.6(2):
- (i) the amount; and
- (ii) the date of its receipt; and
- (iii) the month that is the last month of the period of 3 months in which the amount was due to have been received; and
- (iv) the contact details for the person from whom the amount was received; and
- (d) for each amount on account of levy that, under paragraph 9(2)(a) of the Collection Act, was due to have been paid to, but was not received by, the seller in the quarter:

- (i) the amount; and
- (ii) the month that is the last month of the period of 3 months in which the amount was due to have been received; and
- (iii) the contact details for the person from whom payment of the amount was due; and
- (e) for each amount on account of penalty mentioned in paragraph 9(2)(b) of the Collection Act received by the seller, the contact details for the person from whom the amount was received.

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

- (2) In addition to the information required by regulation 10, a return by a producer who purchases containers from an overseas seller must state, in respect of the quarter during which the producer becomes entitled to take possession of the containers:
- (a) the landed cost of containers; and
  - (b) the amount of levy payable for the containers; and
  - (c) the amount of levy paid for the containers.

### **12.10 What records must be kept**

- (1) A seller to whom subsection 9(1) of the Collection Act applies must keep records showing, for each month:
- (a) the total amount received by the seller from sales of containers; and
  - (b) the contact details of each producer who purchased containers from the seller; and
  - (c) for each sale of containers—the amount received for the containers; and
  - (d) the total amount received for containers to which paragraph 9(3)(a) of the Collection Act applies; and
  - (e) the contact details for each person who purchased containers mentioned in paragraph (d); and
  - (f) for each amount on account of levy received by the seller from a producer under subclause 12.6(2):
    - (i) the date of receipt; and
    - (ii) the month that is the last month of the period of 3 months in which the amount was due to have been received; and
    - (iii) the amount received; and
    - (iv) the contact details for the person from whom it was received.

Penalty: 10 penalty units.

- (2) A producer who purchases containers from a seller in Australia must keep records showing, for each month:
- (a) for purchases of containers to which subsection 9(2) of the Collection Act applies—the total amount paid for the containers; and
  - (b) the total amount paid for containers to which paragraph 9(3)(a) of the Collection Act applies; and
  - (c) the purposes for which containers mentioned in paragraph (b) are used; and

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- (d) any amount on account of levy paid to a seller; and
- (e) the date of each payment on account of levy made to a seller.

Penalty: 10 penalty units.

- (3) A producer who purchases containers from an overseas seller must keep records showing, for each month:

- (a) the total landed cost of the containers; and
- (b) the levy payable for the containers; and
- (c) the levy paid for the containers.

Penalty: 10 penalty units.

- (4) An offence under subclause (1), (2) or (3) 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.

## Part 13—Passionfruit

### 13.1 Application

This Part applies to passionfruit.

### 13.2 Definitions for Part 13

In this Part:

**carton** means an 18 litre container of a kind ordinarily used in the Australian horticultural industry for packing passionfruit.

**fresh passionfruit** means passionfruit other than processing passionfruit.

**passionfruit** means the edible fruit of the passionfruit vine (*passiflora edulis* or *p. edulis f. flavicarpa*) or of a hybrid of the passionfruit vine that is generally accepted as producing passionfruit.

**processing passionfruit** means passionfruit:

- (a) sold by the producer to a first purchaser, or through a buying agent or a selling agent, or exported, for use in the production of a processed product; or
- (b) used by the producer in the production of a processed product.

**retail sale** means the sale of passionfruit by the producer of the passionfruit, except a sale:

- (a) to a first purchaser, a processor or an exporter; or
- (b) through a selling agent, a buying agent or an exporting agent.

Note 1: Passionfruit are chargeable horticultural products—see Part 13 of Schedule 10 to the Customs Charges Regulations.

Note 2: Passionfruit are leviable horticultural products—see Part 13 of Schedule 15 to the Excise Levies Regulations.

### 13.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for passionfruit is a financial year.

### 13.4 Who is a processor

Paragraph (b) of the definition of **processor** in subsection 4(1) of the Collection Act applies to passionfruit.

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 processes the product unless, immediately prior to delivery to that establishment, the product is owned by the proprietor of another

Clause 13.5

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processing establishment, in which case *processor* means the proprietor of that other establishment.

### 13.5 Who is a producer

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

### 13.6 Liability of intermediaries—processors

Paragraph 7(2)(b) of the Collection Act applies to passionfruit.

- 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, any penalty for late payment imposed by section 15 of the Collection Act.

### 13.7 Liability of intermediaries—exporting agents

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

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

### 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.

### 13.9 Persons who must lodge a quarterly return

- (1) The following persons must lodge a return for a quarter:
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- (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.

### **13.10 When a quarterly return must be lodged**

A return for a quarter 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.

### **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.

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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.

**13.11 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 passionfruit bought, sold or exported by the person lodging the return for which charge or levy is payable:

- (a) for passionfruit bought or sold by the person, the quantity at the first point of sale of:
  - (i) fresh passionfruit; and
  - (ii) processing passionfruit; and
- (b) for passionfruit exported by a person:
  - (i) the quantity of fresh passionfruit; and
  - (ii) the quantity of processing passionfruit; and
- (c) the amount of charge or levy payable for the passionfruit; and
- (d) the amount of charge or levy paid by the person for the passionfruit.

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

**13.12 What records must be kept**

- (1) A person mentioned in subclause 13.9(1) must keep records in respect of each quarter 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.



- (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.

- (2) For paragraph (1)(f) or (1A)(f), the details are:
- (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.
- (3) An offence under subclause (1) or (1A) 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.

### **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

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- (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).

## Part 14—Potatoes

### 14.1 Application

This Part applies to potatoes.

### 14.2 Definitions for Part 14

In this Part:

**chargeable potatoes** means export potatoes that are not exempt from charge under clause 14.2 of Part 14 of Schedule 10 to the Customs Charges Regulations.

**deal** means sell, buy, process or export.

**export potatoes** means unprocessed potatoes that are exported.

**exporter**, for export potatoes, means the producer of the potatoes.

**leviable potatoes** means unprocessed potatoes or processing potatoes that are not exempt from levy under clause 14.2 of Part 14 of Schedule 15 to the Excise Levies Regulations.

**owner**, for processing potatoes, means the producer of the processing potatoes.

**potato** means a tuber of the species *Solanum tuberosum*.

**primary producer**, for unprocessed potatoes, means the producer of the unprocessed potatoes.

**processing potatoes** means unprocessed potatoes used in the production of other goods, except potatoes processed at a processing establishment if the business carried out at the establishment is not wholly or substantially a business of processing horticultural products.

**producer** means:

- (a) for unprocessed potatoes—the producer of the potatoes within the meaning of paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act; or
- (b) for processing potatoes—the person who is taken to be the producer under paragraph 14.7(b); or
- (c) for export potatoes—the producer within the meaning of paragraph (g) of the definition of **producer** in subsection 4(1) of the Collection Act.

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.

*retail sale*, in relation to unprocessed potatoes, means sale of the potatoes by a primary producer except sale to a first purchaser, or through a selling agent, buying agent or to a processor.

*unprocessed potatoes* includes potatoes for the fresh market, processing potatoes or potatoes for seed.

Note 1: Potatoes are chargeable horticultural products—see Part 14 of Schedule 10 to the Customs Charges Regulations.

Note 2: Potatoes are leviable horticultural products—see Part 14 of Schedule 15 to the Excise Levies Regulations.

### 14.3 What is a levy year

For the definition of *levy year* in subsection 4(1) of the Collection Act, a levy year for potatoes is a calendar year.

### 14.4 What is not a process

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

- (a) washing;
- (b) brushing;
- (c) grading;
- (d) packing;
- (e) preparing potatoes for non-commercial use;
- (f) any operation in the course of planting or growing potatoes.

### 14.5 Who is a processor—unprocessed potatoes

Unprocessed potatoes 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 processes 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.

### 14.6 Who is a producer—unprocessed potatoes

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, unprocessed potatoes 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:

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- (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.

### 14.7 Who is a producer—processing potatoes

For the purposes of paragraph (e) of the definition of *producer* in subsection 4(1) of the Collection Act:

- (a) processing potatoes are prescribed; and
- (b) the person who owns the processing potatoes when processing begins is taken to be the producer of the processing potatoes.

Note: Paragraph (e) of the definition of *producer* in subsection 4(1) of the Collection Act provides that, for a product prescribed for that paragraph, *producer* means the person who, under the regulations, is to be taken to be the producer of the product.

### 14.8 Liability of intermediaries—exporting agents

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

Note 1: 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.

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.

### 14.9 Liability of intermediaries—processors

Unprocessed potatoes 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, any penalty for late payment imposed by subsection 15(1) of the Collection Act.

### 14.10 When is charge or levy due for payment—people who lodge quarterly returns

For section 6 of the Collection Act, charge or levy payable for unprocessed potatoes, processing potatoes or export potatoes for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 14.12—on the day that the return is lodged; or

- (b) if a return for the quarter is not lodged within the period mentioned in clause 14.12—on the last day of that period.

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

### **14.11 Who must lodge a quarterly return**

- (1) Each of the following persons must lodge a return for a quarter:
- (a) a first purchaser who buys potatoes in the quarter;
  - (b) a processor who buys potatoes in the quarter;
  - (c) an owner of processing potatoes, processing of which began in the quarter;
  - (d) an exporter who exports potatoes in the quarter;
  - (e) an exporting agent who exports potatoes in the quarter;
  - (f) a selling agent who sells potatoes in the quarter;
  - (g) a buying agent who buys potatoes 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 quarterly returns for a levy year if:
- (a) the person has applied under clause 14.17 for an exemption for the year and has not received notice of the Secretary's decision; or
  - (b) the Secretary has granted the person an exemption for the year under clause 14.19 or has continued the person's exemption under clause 14.20; or
  - (c) the Secretary is required under clause 14.20 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **14.12 When must a quarterly return be lodged**

A return for a quarter 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.

### **14.13 When is levy or charge due for payment—people who lodge annual returns**

For section 6 of the Collection Act, charge or levy payable for unprocessed potatoes, processing potatoes or export potatoes for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 14.15—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 14.15—on that day.

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

#### 14.14 Who must lodge an annual return

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

- (a) a primary producer who sells leviable potatoes by retail sale in the year;
- (b) a person who deals with leviable potatoes or chargeable potatoes in the year and is exempt from lodging quarterly returns for the year.

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

#### 14.15 When must an annual return be lodged

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

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

#### 14.16 What must be included in a return

- (1) 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:
  - (a) the quantity of each class of potatoes dealt with by the person lodging the return (other than potatoes for which no levy or charge is payable); and
  - (b) the total amount of levy and charge payable for each class of potatoes; and
  - (c) the total amount of levy and charge paid by the person lodging the return for each class of potatoes.

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

- (2) A person who is the proprietor of more than 1 processing establishment must lodge a single return containing all the details mentioned in subclause (1) for each processing establishment of which the person is the proprietor.

#### 14.17 Exemption from lodging quarterly returns

- (1) A person may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the quantity of potatoes with which the person will, or is likely to, deal in the year is less than 1 000 tonnes.
- (2) A reference in subclause (1) to the quantity of potatoes with which a person will, or is likely to, deal in a levy year is a reference to:
  - (a) the quantity of potatoes for which the person is, or may become, liable to pay levy or charge for the year; or
  - (b) the quantity of potatoes for which the person is, or may become, liable to pay an amount under subsection 7(1), (2) or (3) of the Collection Act.

#### 14.18 Form of application for exemption

- (1) An application for an exemption from the requirement to lodge quarterly returns for a levy year must include:
  - (a) the following details:



- (i) the applicant's full name;
  - (ii) the applicant's business or residential address (not the address of a post office box or post office bag);
  - (iii) if the applicant has a post office box address or a post office bag address—that address;
  - (iv) the applicant's ABN, if any;
  - (v) if the applicant is a company and does not have an ABN—its ACN; and
- (b) a statement to the effect that:
- (i) the applicant is, or may become, liable to pay levy or charge for the 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 for the year; and
- (c) a statement to the effect that the applicant believes that the quantity of potatoes for which the person is, or may become, liable to pay the levy or charge will be less than 1 000 tonnes.
- (2) An application must be sent to the Secretary's postal address.

#### **14.19 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 an 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.

#### **14.20 Continuation of exemption**

- (1) If a person who is exempt from lodging monthly returns for a levy year lodges an annual return for that 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 an 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

Clause 14.21

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- (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.

**14.21 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 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.

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

**14.22 What records must be kept—primary producers**

- (1) A primary producer must keep records showing, in respect of each quarter, for leviable potatoes sold by the producer by retail sale:
  - (a) the quantity of leviable potatoes so sold; and
  - (b) the amount of levy payable on that quantity of leviable potatoes; and
  - (c) the amount of levy paid by the producer on that quantity of leviable potatoes.

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.

**14.23 What records must be kept—owners of processing potatoes**

- (1) An owner of processing potatoes must keep records showing, in respect of each quarter, for processing potatoes the processing of which begins in the quarter:
  - (a) the quantity of processing potatoes; and
  - (b) the amount of levy payable on that quantity of processing potatoes; and
  - (c) the amount of levy paid by the owner for that quantity of processing potatoes.

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.

**14.24 What records must be kept—persons who export potatoes**

- (1) A person who exports potatoes must keep records showing, in respect of each quarter:
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- (a) the quantity of potatoes exported by the exporter; and
- (b) the amount of charge payable on the potatoes; and
- (c) the amount of charge paid by the exporter for the chargeable potatoes.

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.

#### **14.25 What records must be kept—first purchasers, agents and processors**

- (1) A first purchaser, a selling agent, a buying agent or a processor of potatoes must keep records showing, in respect of each quarter:
- (a) the quantity of potatoes dealt with by the first purchaser, agent or processor; and
  - (b) the amount of levy and charge payable on the potatoes; and
  - (c) the amount of levy and charge paid by the first purchaser, agent or processor for the potatoes.

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.

#### **14.26 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 14.19(1)(a) to grant an exemption; or
- (b) refusing under paragraph 14.20(1)(a) to continue an exemption.

## Part 15—Stone fruit

### 15.1 Application

This Part applies to stone fruit.

### 15.2 Definitions for Part 15

In this Part:

**chargeable stone fruit** means stone fruit on which charge is imposed.

**exporter**, for particular stone fruit, means the producer of the stone fruit 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.

**leviable stone fruit** means stone fruit on which levy is imposed.

**retail sale** means a sale of stone fruit by the grower except a sale to a first purchaser or through a selling agent, a buying agent or an exporting agent.

**stone fruit** means a fruit:

- (a) of the species *Prunus domestica*, *Prunus salicina*, *Prunus besseyi*, *Prunus americana*, *Prunus nigra*, *Prunus munsoniana*, *Prunus insititia*, *Prunus cerasifera* or *Prunus spinosa*, commonly called plum; or
- (b) of the species *Prunus armeniaca*, commonly called apricot; or
- (c) of the species *Prunus persica*, commonly called nectarine or peach.

Note 1: Stone fruit are chargeable horticultural products—see Part 15 of Schedule 10 to the Customs Charges Regulations.

Note 2: Stone fruit are leviable horticultural products—see Part 15 of Schedule 15 to the Excise Levies Regulations.

### 15.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for chargeable and leviable stone fruit is a financial year.

### 15.4 Who is a producer

For paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act, leviable stone fruit 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.

### **15.5 Liability of intermediaries—exporting agents**

For subsection 7(3) of the Collection Act, chargeable stone fruit are prescribed.

Note 1: 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.

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.

### **15.6 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 stone fruit for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 15.8—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 15.8—on the last day of that period.

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

### **15.7 Who must lodge a quarterly return**

(1) The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys stone fruit in the quarter;
- (b) a buying agent who buys stone fruit in the quarter;
- (c) a selling agent who sells stone fruit in the quarter;
- (d) an exporter who exports stone fruit in the quarter;
- (e) an exporting agent who exports stone fruit 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 quarterly returns in a levy year if:

- (a) the person has applied under clause 15.13 for an exemption for the year and has not received notice of the Secretary's decision; or
- (b) the Secretary has granted the person an exemption for the year under clause 15.15 or has continued the person's exemption under clause 15.16; or
- (c) the Secretary is required, under clause 15.16, to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

Clause 15.8

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### 15.8 When must a quarterly return be lodged

A return for a quarter 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.

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

For section 6 of the Collection Act, charge or levy payable on stone fruit for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 15.11—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 15.11—on that day.

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

### 15.10 Who must lodge an annual return

A return for a levy year must be lodged by:

- (a) a person who:
  - (i) in relation to a quarter in the levy year, is mentioned in subclause 15.7(1); and
  - (ii) is exempt from lodging quarterly returns in the levy year under clause 15.15 or 15.16; and
- (b) a producer who sells stone fruit by retail sale in the levy year.

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

### 15.11 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.

### 15.12 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:

- (a) for leviable stone fruit bought or sold by the person lodging the return:
  - (i) the quantity, in kilograms, of the stone fruit; and
  - (ii) the amount of levy payable for the stone fruit; and
  - (iii) the amount of levy paid by the person for the stone fruit; and
- (b) for chargeable stone fruit exported by the person lodging the return:
  - (i) the quantity, in kilograms, of the stone fruit; and
  - (ii) the amount of charge payable for the stone fruit; and
  - (iii) the amount of charge paid by the person for the stone fruit.

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

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### **15.13 Exemption from lodging quarterly returns**

A person may apply for exemption from the requirement to lodge quarterly returns in a levy year if the person has reasonable grounds for believing that the sum of levy and charge payable by the person for the year will be less than \$500.

### **15.14 Form of application for exemption**

- (1) An application for exemption must include:
  - (a) the applicant's full name; and
  - (b) the applicant's business or residential address of the applicant (not a post office box or post office bag); and
  - (c) if the applicant has a post office box address or a post office bag address—that address; and
  - (d) the applicant's ABN, if any; and
  - (e) if the applicant is a company and does not have an ABN—the applicant's ACN.
- (2) If the applicant is a first purchaser, buying agent or selling agent, the application must include:
  - (a) a statement to the effect that the applicant is a person who will, or may, incur a liability under subsection 7(1) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than \$500.
- (3) If the applicant is an exporter or exporting agent, the application must include:
  - (a) a statement to the effect that the applicant is a person who will, or may, incur a liability under subsection 7(3) of the Collection Act in the levy year to which the application relates; and
  - (b) a statement to the effect that the applicant believes that the amount of the liability will be less than \$500.
- (4) An application must be sent to the Secretary's postal address.

### **15.15 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 an exemption from the requirement to lodge quarterly returns for a levy year, the Secretary must have regard to:
  - (a) the amount of levy or charge payable by the applicant in the preceding 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 under subsection 7(1) or (3) of the Collection Act in the levy year to which the application relates.

### 15.16 Continuation of exemption

- (1) If a person who is exempt from lodging quarterly returns in a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next 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 charge payable by the person in the previous levy year; and
  - (b) any information that is available to the Secretary about the amount of liability that the person is likely to incur under subsection 7(1) or (3) of the Collection Act in the following levy year.

### 15.17 When must a quarterly return be lodged if exemption refused or not continued

If a person receives notice of a refusal to grant, or of a refusal to continue, an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in 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.

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

### 15.18 What records must be kept

- (1) The following persons must keep records for a levy year, setting out the matters mentioned in subclause (2) in respect of the levy year:
  - (a) a person mentioned in subclause 15.7(1);
  - (b) a producer.

Penalty: 10 penalty units.

- (2) For subclause (1), the matters are:
  - (a) the quantities, in kilograms, of stone fruit bought, sold (by retail sale or otherwise) or exported by the person; and
  - (b) the amount of levy and charge payable for each of those quantities; and
  - (c) the amount of levy and charge paid by the person for each of those quantities; and
  - (d) the details mentioned in subclause (3) for each person:
    - (i) to whom stone fruit was sold by the person, other than by retail sale; and
    - (ii) from whom stone fruit was bought by the person; and



- (e) the name and business or residential address (not the address of a post office box or post office bag) of each person to whom stone fruit was exported by the person; and
  - (f) the total quantity, in kilograms, of stone fruit:
    - (i) sold by the person to each person mentioned in subparagraph (d)(i); and
    - (ii) bought by the person from each person mentioned in subparagraph (d)(ii); and
    - (iii) exported by the person to each person mentioned in paragraph (e).
- (3) For paragraph (2)(d), the details are:
- (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.
- (4) 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.

### 15.19 Review of decisions

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 15.15(1)(a) to grant an exemption; or
- (b) refusing under paragraph 15.16(1)(a) to continue an exemption.

## Part 16—Strawberries

### 16.1 Application

This Part applies to strawberries.

### 16.2 Definitions for Part 16

In this Part:

**buyer** means a person who buys strawberry runners from a seller.

**seller** means a person who sells strawberry runners.

**strawberry** means a fruit of the plant species *Fragaria X Ananassa*.

**strawberry runner** means:

- (a) a daughter plant originating at a node on the stolon of a mother plant of the species *Fragaria X Ananassa*; or
- (b) a plant produced by tissue culture to propagate the species *Fragaria X Ananassa*.

Note 1: Paragraph (hb) of the definition of **producer** in subsection 4(1) of the Collection Act provides that in the case of a collection product that will, for the purpose of the imposition of levy under subclause 2(2) of Schedule 15 to the Excise Levies Act, be presumed to have been produced in Australia, **producer** means the person who would, if the collection product presumed to be produced were actually produced, be taken to be the grower of the product.

Note 2: Clause 16.3 of Part 16 of Schedule 15 to the Excise Levies Regulations provides that, for subclause 2(2) of Schedule 15 to the Excise Levies Act, the amount of strawberries presumed to be produced in Australia is to be determined by reference to the number of strawberry runners purchased for use in the production of the strawberries.

Note 3: Strawberries are leviable horticultural products—see Part 16 of Schedule 15 to the Excise Levies Regulations.

### 16.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for strawberries is a financial year.

### 16.4 Time of purchase

Strawberry runners are taken to be purchased when the purchase price is paid in full.

### 16.5 Strawberry runners are prescribed goods or services

For paragraph (b) of the definition of **prescribed goods or services** in subsection 4(1) of the Collection Act, strawberry runners are identified as goods used in the production of strawberries.

- Note 1: Paragraph (b) of the definition of *prescribed goods or services* in subsection 4(1) of the Collection Act provides that *prescribed goods or services*, for a collection product of a particular kind, means, if those products are of a kind that will, for the imposition of levy under subclause 2(2) of Schedule 15 to the Excise Levies Act, be presumed to have been produced in Australia, goods identified by the regulations as goods used in the production of those products.
- Note 2: Clause 16.3 of Part 16 of Schedule 15 to the Excise Levies Regulations provides that, for subclause 2(2) of Schedule 15 to the Excise Levies Act, the amount of strawberries presumed to be produced in Australia is to be determined by reference to the number of strawberry runners purchased for use in the production of the strawberries.

### **16.6 When is an amount on account of levy due for payment—sellers**

For subsection 9(1) of the Collection Act, the prescribed period is 28 days after the end of the quarter in which an amount on account of levy or penalty is received.

- Note 1: This is the period, under subsection 9(1) of the Collection Act, within which a strawberry runner seller who receives an amount on account of levy or penalty from the person to whom the strawberry runners were sold must pay the amount to the Commonwealth.
- Note 2: For penalty for late payment, see section 15 of the Collection Act.

### **16.7 When is an amount on account of levy due for payment—buyers**

For subsection 9(2A) of the Collection Act, the prescribed period is the period ending on the day when payment of the purchase price for the strawberry runners is due.

- Note: This is the period, under subsection 9(2A) of the Collection Act, within which a person who buys strawberry runners must pay the strawberry runner seller an amount on account of levy.

### **16.8 Notice that levy is payable**

A seller must include, in each invoice or sale note recording a sale of strawberry runners to a strawberry producer, a notice stating:

- (a) that, under subsection 9(2A) of the Collection Act, the buyer must pay the seller an amount on account of levy; and
- (b) the amount payable; and
- (c) the date by which the amount must be paid.

### **16.9 Who must lodge a return**

A seller to whom subsection 9(1) of the Collection Act applies must lodge a return for a quarter.

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

### **16.10 When must a return be lodged**

A return for a quarter return must be lodged within 28 days after the end of the quarter to which it relates.

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Clause 16.11

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

**16.11 What must be included in a return**

- (1) In addition to the information required by regulation 10, a return for a quarter must state, in respect of the quarter:
  - (a) the amount received by the seller from the sale of strawberry runners, less any amount attributable to the sale of strawberry runners to which subsection 9(3A) of the Collection Act applies; and
  - (b) the amount on account of levy received by the seller within the period mentioned in clause 16.7; and
  - (c) for each amount on account of levy received by the seller after it became due:
    - (i) the date when the amount was due; and
    - (ii) the date when the amount was received; and
    - (iii) the details mentioned in subclause (2) for the person from whom the amount was received; and
  - (d) for each amount on account of levy due to have been paid to, but not received by, the seller:
    - (i) the amount on account of levy owing; and
    - (ii) the date when the amount was due to have been paid; and
    - (iii) the details mentioned in subclause (2) for the person from whom the amount was due.

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

- (2) For subparagraphs (1)(c)(iii) and (d)(iii), the details are:
  - (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.

**16.12 What records must be kept—sellers**

- (1) A seller must keep records setting out, in respect of each quarter:
  - (a) the total amount received by the seller from the sale of strawberry runners for the quarter; and
  - (b) the details mentioned in subclauses (2) and (3) in respect of each quarter.

Penalty: 10 penalty units.

- (2) For sales of strawberry runners to which subsection 9(2A) of the Collection Act applies, the records must set out:
  - (a) the amount received from each sale; and
  - (b) for each amount on account of levy received:
    - (i) the date when the amount was due; and
    - (ii) the date when the amount was received; and

- (iii) the details mentioned in subclause (4) for the person from whom the amount was received.
- (3) For sales of strawberry runners to which subsection 9(3A) of the Collection Act applies, the records must set out:
  - (a) the total amount received from sales; and
  - (b) the details mentioned in subclause (4) for each person who purchased strawberry runners.
- (4) For subparagraph (2)(b)(iii) and paragraph (3)(b), the details are:
  - (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.
- (5) 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.

### **16.13 What records must be kept—buyers**

- (1) A buyer must keep records setting out, in respect of each quarter:
  - (a) for purchases of strawberry runners to which subsection 9(2A) of the Collection Act applies:
    - (i) the total amount paid for the strawberry runners; and
    - (ii) each amount on account of levy paid to the seller; and
  - (b) for purchases of strawberry runners to which subsection 9(3A) of the Collection Act applies:
    - (i) the total amount paid for the strawberry runners; and
    - (ii) the purposes for which the strawberry runners are intended to be used.

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.

## Part 17—Vegetables

### 17.1 Application

This Part applies to vegetables, except:

- (a) asparagus; or
- (b) garlic; or
- (c) hard onions (being bulbs of the species *Allium cepa*); or
- (d) herbs (other than fresh culinary shallots and parsley); or
- (e) melons; or
- (f) mushrooms; or
- (g) potatoes; or
- (h) seed sprouts; or
- (ha) sweet potatoes; or
- (i) tomatoes; or
- (j) vegetables of a kind for which the following rates of levy or charge are not applicable:
  - (i) a rate of levy for subclause 4(3) of Schedule 15 to the Excise Levies Act; or
  - (ii) a rate of charge for subclause 3(5) of Schedule 10 to the Customs Charges Act.

Note 1: Vegetables to which Part 17 of Schedule 10 to the Customs Charges Regulations applies are chargeable horticultural products—see that Part.

Note 2: Vegetables to which Part 17 of Schedule 15 to the Excise Levies Regulations applies are leviable horticultural products—see that Part.

### 17.2 Definitions for Part 17

In this Part:

**exporter**, for vegetables to which this Part applies, means the producer of the vegetables within the meaning of paragraph (g) of the definition of **producer** in subsection 4(1) of the Collection Act.

**retail sale**, for vegetables to which this Part applies, means a sale by a producer, but does not include a sale to a first purchaser or through a selling agent, a buying agent or an exporting agent.

### 17.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for vegetables to which this Part applies is a financial year.

### 17.4 What is not a process

For the definition of *process* in subsection 4(1) of the Collection Act, an operation after harvesting, if the operation does not alter the vegetables from their natural state, is prescribed.

Example: Processing may include canning, bottling, freezing, cooking, pickling, roasting or dehydrating, but does not include washing, grading or packing vegetables, transporting vegetables in their natural state or preparing vegetables for sale in their natural state.

### 17.5 Who is a producer

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, vegetables to which this Part applies 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.

### 17.6 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 vegetables to which this Part applies for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 17.8—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 17.8—on the last day of that period.

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

### 17.7 Who must lodge a quarterly return

- (1) The following persons must lodge a return for a quarter:
  - (a) a first purchaser who buys vegetables to which this Part applies in the quarter;
  - (b) a buying agent who buys vegetables to which this Part applies in the quarter;
  - (c) a selling agent who sells vegetables to which this Part applies in the quarter;
  - (d) an exporter who exports vegetables to which this Part applies in the quarter;
  - (e) an exporting agent who exports vegetables to which this Part applies in the quarter;

Clause 17.8

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- (f) a producer who sells vegetables to which this Part applies other than by retail sale 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 quarterly returns in a levy year if:
- (a) the person has applied for an exemption under clause 17.13 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 the levy year under clause 17.15, or has continued the person's exemption for the levy year under clause 17.16; or
  - (c) the Secretary is required, under clause 17.16, to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### 17.8 When must a quarterly return be lodged

A return for a quarter 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.

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

For section 6 of the Collection Act, charge or levy payable on vegetables to which this Part applies for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 17.11—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 17.11—on that day.

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

### 17.10 Who must lodge an annual return

An annual return for a levy year must be lodged by:

- (a) a person who:
  - (i) is a person described in subclause 17.7(1); and
  - (ii) is exempt from lodging quarterly returns for the levy year under clause 17.15 or 17.16; and
- (b) a producer who sells vegetables to which this Part applies by retail sale in the levy year.

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

### 17.11 When must an annual return be lodged

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

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



### **17.12 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:

- (a) the quarters, if any, for which returns have been lodged previously in the levy year by the person lodging the return; and
- (b) for vegetables to which this Part applies (except processed vegetables) bought or sold by the person lodging the return in the quarter or levy year for which levy is payable:
  - (i) the amount paid for the vegetables at the first point of sale; and
  - (ii) the amount of levy payable for the vegetables; and
  - (iii) the amount of levy paid by the person for the vegetables; and
- (c) for processed vegetables to which this Part applies bought or sold by the person lodging the return in the quarter or levy year for which levy is payable:
  - (i) the amount that would have been paid for the vegetables at the first point of sale, if that sale had occurred before processing; and
  - (ii) the amount of levy payable for the vegetables; and
  - (iii) the amount of levy paid by the person for the vegetables; and
- (d) for vegetables to which this Part applies exported by the person lodging the return in the quarter or levy year for which charge is payable:
  - (i) the free on board value of the vegetables immediately prior to export; and
  - (ii) the amount of charge payable for the vegetables; and
  - (iii) the amount of charge paid by the person for the vegetables.

Note: For penalty, see section 24 of the Collection Act.

### **17.13 Exemption from lodging quarterly returns**

A person may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the sum of levy and charge payable by the person for the year is, or is likely to be, less than \$500.

### **17.14 Form of application for exemption**

- (1) An application must include:
  - (a) the following details:
    - (i) the applicant's full name;
    - (ii) the applicant's business or residential address (not the address of a post office box or post office bag);
    - (iii) if the applicant has a post office box or a post office bag address—that address;
    - (iv) the applicant's ABN, if any;
    - (v) if the applicant is a company and does not have an ABN—its ACN; and

Clause 17.15

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- (b) a statement to the effect that the applicant believes that the applicant has incurred, or is likely to incur, a liability to pay levy or charge for the levy year to which the application relates; and
- (c) a statement to the effect that the applicant believes that the amount of the liability is, or is likely to be, less than \$500.

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

### 17.15 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) In deciding to grant an exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of the levy or charge that the applicant is, or is likely to be, liable to pay for the levy year; and
  - (b) the amount of levy or charge that the applicant was liable to pay for the immediately preceding levy year.

### 17.16 Continuation of exemption

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for the year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) In deciding whether to continue an exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of levy or charge that the person is, or is likely to be, liable to pay for the next levy year; and
  - (b) the amount of levy or charge that the person was liable to pay for the levy year to which the annual return relates.

### 17.17 When must a quarterly return 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 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.

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

### 17.18 What records must be kept

- (1) The following persons must keep records, in accordance with subclauses (2) and (3), for a levy year:
  - (a) a person mentioned in subclause 17.7(1);
  - (b) a producer who sells vegetables to which this Part applies by retail sale in the levy year.

Penalty: 10 penalty units.

- (1A) 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.

- (2) For subclause (1), the records must set out, for each kind of vegetable to which this Part applies dealt with in the levy year:
  - (a) for vegetables (except processed vegetables) bought or sold by the person—the amount paid for the vegetables at the first point of sale; and
  - (b) for processed vegetables bought or sold by the person, if unprocessed vegetables of the same kind were sold on the day the vegetables were delivered for processing—the market price of the unprocessed vegetables on that day; and
  - (c) for processed vegetables bought or sold by the person, and to which paragraph (b) does not apply—the value of the vegetables immediately before processing; and
  - (d) for vegetables exported by the person—the free on board value of the vegetables; and
  - (e) the amount of levy and charge payable for the vegetables; and
  - (f) the amount of levy and charge paid by the person for the vegetables; and
  - (g) the details mentioned in subclause (3) for each person:
    - (i) to whom vegetables were sold by the person, other than by retail sale; and
    - (ii) from whom vegetables were bought by the person; and
  - (h) the name and business or residential address (not the address of a post office box or post office bag) of each person to whom vegetables were exported; and
  - (j) the amount paid, at the first point for sale, for vegetables (except processed vegetables):
    - (i) sold to each person to whom subparagraph (g)(i) applies; and
    - (ii) bought from each person to whom subparagraph (g)(ii) applies; and
  - (k) the free on board value immediately prior to export, of each consignment of vegetables exported.

Note: For paragraph (2)(c), clause 17.5 of Part 17 of Schedule 15 to the Excise Levies Regulations provides that the value of the vegetables before processing must be substantiated by the producer's financial records in accordance with generally accepted accounting principles.

Clause 17.19

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- (3) For paragraph (2)(g), the details are:
- (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.

**17.19 Review of decisions**

A person may apply to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing under paragraph 17.15(1)(a) to grant an exemption; or
- (b) refusing under paragraph 17.16(1)(a) to continue an exemption.

## Part 18—Agaricus mushrooms

### 18.1 Application

This Part applies to Agaricus mushrooms.

### 18.2 Definitions for Part 18

In this Part:

**Agaricus mushroom** means the fruiting body of the *Agaricus* genus of cultivated fungi.

**buyer** means a person who buys mushroom spawn from a seller.

**mushroom spawn** means *Agaricus spp* mycelia contained in a medium and used for the inoculation of phase 2 substrate, including (but not limited to) grain spawn, casing inoculum and inoculated supplement.

**overseas seller** means a seller who sells mushroom spawn outside Australia.

**seller** means a person who sells mushroom spawn.

Note 1: Paragraph (hb) of the definition of **producer** in subsection 4(1) of the Collection Act provides that in the case of a collection product that will, for the purpose of the imposition of levy under subclause 2(2) of Schedule 15 to the Excise Levies Act, be presumed to have been produced in Australia, **producer** means the person who would, if the collection product presumed to be produced were actually produced, be taken to be the grower of the product.

Note 2: Clause 18.3 of Part 18 of Schedule 15 to the Excise Levies Regulations provides that, for subclause 2(2) of Schedule 15 to the Excise Levies Act, the amount of Agaricus mushrooms presumed to be produced in Australia is to be determined by reference to the number of kilograms of mushroom spawn purchased or produced for use in the production of the Agaricus mushrooms.

Note 3: Agaricus mushrooms are leviable horticultural products—see Part 18 of Schedule 15 to the Excise Levies Regulations.

### 18.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for Agaricus mushrooms is:

- (a) for the first levy year—the period beginning on 1 January 2002 and ending on 30 June 2002; and
- (b) for a later levy year—a financial year.

### 18.4 Time of purchase

Mushroom spawn are taken to be purchased when the purchase price is due to be paid.

Clause 18.5

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### 18.5 Mushroom spawn are prescribed goods or services

For paragraph (b) of the definition of *prescribed goods or services* in subsection 4(1) of the Collection Act, mushroom spawn are identified as goods used in the production of mushrooms.

Note 1: Paragraph (b) of the definition of *prescribed goods or services* in subsection 4(1) of the Collection Act provides that *prescribed goods or services*, for a collection product of a particular kind, means, if those products are of a kind that will, for the imposition of levy under subclause 2(2) of Schedule 15 to the Excise Levies Act, be presumed to have been produced in Australia, goods identified by the regulations as goods used in the production of those products.

Note 2: Clause 18.3 of Part 18 of Schedule 15 to the Excise Levies Regulations provides that, for subclause 2(2) of Schedule 15 to the Excise Levies Act, the amount of Agaricus mushrooms presumed to be produced in Australia is to be determined by reference to the number of kilograms of mushroom spawn purchased for use in the production of the Agaricus mushrooms.

### 18.6 When is an amount on account of levy due for payment—sellers

- (1) This clause applies to a seller who:
  - (a) sells mushroom spawn to a buyer; and
  - (b) receives from the buyer an amount on account of levy or penalty.
- (2) For subsection 9(1) of the Collection Act, the prescribed period for the seller is 28 days after the end of the quarter in which the amount on account of levy or penalty is received.

Note 1: This is the period, under subsection 9(1) of the Collection Act, within which a seller who receives an amount on account of levy or penalty from the person to whom the mushroom spawn were sold must pay the amount to the Commonwealth.

Note 2: For penalty for late payment, see section 15 of the Collection Act.

### 18.7 When is an amount on account of levy due for payment—buyers

For subsection 9(2A) of the Collection Act, the prescribed period is the period ending on the day when the first payment of the purchase price for the mushroom spawn is due.

Note: This is the period, under subsection 9(2A) of the Collection Act, within which a person who buys mushroom spawn must pay the seller an amount on account of levy.

### 18.8 When is levy due for payment—producers

- (1) This clause applies to the following mushroom producers:
  - (a) a mushroom producer who produces and uses mushroom spawn for mushroom production;
  - (b) a mushroom producer who purchases mushroom spawn from an overseas seller and uses that mushroom spawn for mushroom production.
- (2) For section 6 of the Collection Act, levy payable by the mushroom producer is due for payment:

- (a) for a mushroom producer mentioned in paragraph (1)(a)—28 days after the end of the month in which the mushroom spawn are produced and used to produce mushrooms; and
- (b) for a mushroom producer mentioned in paragraph (1)(b)—28 days after the end of the month in which the mushroom spawn are purchased from an overseas seller and used to produce mushrooms.

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

### **18.8A Application for alternative payment method—large producers**

- (1) A producer that has reasonable grounds for believing that the producer will produce or purchase 370 000 kg or more of mushroom spawn in a levy year may apply for approval to pay levy in accordance with the method set out in clause 18.8C.
- (2) An application must be sent to the Secretary's postal address and include:
  - (a) the producer's personal details; and
  - (b) a statement to the effect that the producer expects to produce or purchase 370 000 kg or more of mushroom spawn in the levy year.

### **18.8B Grant or refusal of application**

- (1) The Secretary must, within 14 days after receiving an application under clause 18.8A:
  - (a) decide whether to grant the approval; and
  - (b) give the applicant written notice of the decision.
- (2) When deciding whether to grant an approval, the Secretary must have regard to:
  - (a) the amount of levy paid by the producer on mushroom spawn in the year preceding the levy year; and
  - (b) any information that is available to the Secretary about the amount of mushroom spawn that the producer is likely to produce or purchase in the levy year to which the application relates.

### **18.8C Alternative payment method**

- (1) This clause applies to a producer if the Secretary grants an application by a producer under clause 18.8B for a levy year.
- (2) If at the end of a month in the levy year, the total number of kilograms of mushroom spawn that has been produced or purchased by the producer in the levy year exceeds the expected fraction for the month, the amount of levy payable by the producer for that month is \$133 200.
- (3) For subclause (2), the *expected fraction* for a month is:

$$\frac{370\,000}{12} \times \text{number of months that have elapsed in the levy year}$$

Clause 18.9

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### 18.9 Notice that levy is payable

A seller must include, in each invoice or sale note recording a sale of mushroom spawn to a buyer, a notice stating:

- (a) that, under subsection 9(2A) of the Collection Act, the buyer must pay the seller an amount on account of levy; and
- (b) the amount payable; and
- (c) the date by which the amount must be paid.

### 18.10 Who must lodge a return

- (1) A seller to whom subsection 9(1) of the Collection Act applies must lodge a return for a quarter.
- (2) A mushroom producer to whom clause 18.8 applies must lodge a return for each month in which the mushroom spawn produced, or purchased from an overseas seller, by the mushroom producer was used by that producer to produce Agaricus mushrooms.

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

### 18.11 When must a return be lodged

- (1) A return for a quarter must be lodged within 28 days after the end of the quarter to which it relates.
- (2) A return for a month must be lodged within 28 days after the end of the month to which it relates.

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

### 18.12 What must be included in a quarterly return

- (1) In addition to the information required by regulation 10, a return for a quarter must state, in respect of the quarter:
  - (a) the quantity, in kilograms, of mushroom spawn sold by the seller; and
  - (b) the amount received by the seller from the sale of mushroom spawn, less any amount attributable to the sale of mushroom spawn to which subsection 9(3A) of the Collection Act applies; and
  - (c) the amount on account of levy received by the seller within the period mentioned in clause 18.7; and
  - (d) for each amount on account of levy received by the seller after it became due:
    - (i) the date when the amount on account of levy was due; and
    - (ii) the date when the amount was received; and
    - (iii) the details mentioned in subclause (2) for the person from whom the amount was received; and
  - (e) for each amount on account of levy due to have been paid to, but not received by, the seller:



- (i) the amount on account of levy owing; and
- (ii) the date when the amount was due to have been paid; and
- (iii) the details mentioned in subclause (2) for the person from whom the amount was due.

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

- (2) For subparagraphs (1)(d)(iii) and (e)(iii), the details are:
  - (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.

### **18.13 What must be included in a monthly return**

In addition to the information required by regulation 10, a return for a month must state, in respect of the month:

- (a) for a return lodged by a mushroom producer mentioned in paragraph 18.8(1)(a):
  - (i) the total quantity, in kilograms, of mushroom spawn previously produced and used in the levy year; and
  - (ii) the total quantity, in kilograms, of mushroom spawn produced and used that month; and
  - (iii) the combined total quantity, in kilograms, of mushroom spawn mentioned in subparagraphs (i) and (ii); and
- (b) for a return lodged by a mushroom producer mentioned in paragraph 18.8(1)(b):
  - (i) the total quantity, in kilograms, of mushroom spawn previously purchased from an overseas seller and used in the levy year; and
  - (ii) the total quantity, in kilograms, of mushroom spawn purchased from an overseas seller and used that month; and
  - (iii) the combined total quantity, in kilograms, of mushroom spawn mentioned in subparagraphs (i) and (ii); and
- (c) the amount of levy payable for the month; and
- (d) the amount of levy paid for the month by the person lodging the return.

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

### **18.14 What records must be kept—sellers**

- (1) A seller must keep records setting out, in respect of each quarter:
  - (a) the total quantity, in kilograms, of mushroom spawn previously sold by the seller in the levy year; and
  - (b) the total quantity, in kilograms, of mushroom spawn sold by the seller in the quarter; and
  - (c) the combined total quantity, in kilograms, of mushroom spawn mentioned in paragraphs (a) and (b); and

Clause 18.15

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- (d) the total amount received by the seller from the sale of mushroom spawn in the quarter; and
- (e) the amount received on account of levy and penalty from the sale of mushroom spawn in the quarter; and
- (f) the details mentioned in subclauses (3) and (4) in respect of each quarter.

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.

- (3) For sales of mushroom spawn to which subsection 9(2A) of the Collection Act applies, the records must set out:

- (a) the quantity, in kilograms, of mushroom spawn sold in each sale; and
- (b) the amount received from each sale; and
- (c) the amount received on account of levy and penalty from each sale; and
- (d) for each amount on account of levy and penalty received:
  - (i) the sale to which the amount relates; and
  - (ii) the date when the amount was due; and
  - (iii) the date when the amount was received; and
  - (iv) the details mentioned in subclause (5) for the person from whom the amount was received.

- (4) For sales of mushroom spawn to which subsection 9(3A) of the Collection Act applies, the records must:

- (a) set out the total amount received from sales; and
- (b) set out the details mentioned in subclause (5) for each buyer; and
- (c) include a copy of the written notice from each buyer, stating that the buyer does not intend to use the mushroom spawn for producing mushrooms.

- (5) For subparagraph (3)(d)(iv) and paragraph (4)(b), the details are:

- (a) the person's full name; and
- (b) the person's business or residential address (not the address of a post office box or post office bag); and
- (c) the person's ABN, if any; and
- (d) if the person is a company and does not have an ABN—its ACN.

Note 1: A seller who is also a buyer must comply with the requirements of clause 18.15.

Note 2: A seller who is also a mushroom producer to whom clause 18.8 applies must comply with the requirements of clause 18.16.

### 18.15 What records must be kept—buyers

- (1) A buyer must keep records setting out, in respect of each quarter:
- (a) for purchases of mushroom spawn to which subsection 9(2A) of the Collection Act applies:

- (i) the total quantity, in kilograms, of mushroom spawn previously purchased in the levy year; and
  - (ii) the total quantity, in kilograms, of mushroom spawn purchased in the quarter; and
  - (iii) the total amount paid for the mushroom spawn in the quarter; and
  - (iv) each amount on account of levy and penalty (if any) paid to the seller; and
- (b) for purchases of mushroom spawn to which subsection 9(3A) of the Collection Act applies:
- (i) the total amount paid for the mushroom spawn; and
  - (ii) the purposes for which the mushroom spawn are intended to be used; and
  - (iii) a copy of the written notice to the seller, stating that the buyer does not intend to use the mushroom spawn for producing mushrooms.

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: A buyer who is also a seller must comply with the requirements of clause 18.14.

Note 3: A buyer who is also a mushroom producer to whom clause 18.8 applies must comply with the requirements of clause 18.16.

Note 4: For offences in relation to how long records must be kept, see regulation 12.

### **18.16 What records must be kept—producers**

- (1) A mushroom producer mentioned in paragraph 18.8(1)(a) must keep records setting out, in respect of each month:
- (a) the total quantity, in kilograms, of mushroom spawn previously produced and used in the levy year; and
  - (b) the total quantity, in kilograms, of mushroom spawn produced and used in the month; and
  - (c) the total amount of levy and penalty (if any) payable for mushroom spawn produced and used for the month; and
  - (d) the total amount of levy and penalty (if any) paid for mushroom spawn produced and used for the month.

Penalty: 10 penalty units.

- (2) A mushroom producer mentioned in paragraph 18.8(1)(b) must keep records setting out, in respect of each month:
- (a) the total quantity, in kilograms, of mushroom spawn previously purchased from an overseas seller and used in the production of mushrooms in the levy year; and
  - (b) the total quantity, in kilograms, of mushroom spawn purchased from an overseas seller and used in the production of mushrooms in the month; and

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- (c) the total amount of levy and penalty (if any) payable for mushroom spawn purchased from an overseas seller and used in the production of mushrooms for the month; and
- (d) the total amount of levy and penalty (if any) paid for mushroom spawn purchased from an overseas seller and used in the production of mushrooms for the month.

Penalty: 10 penalty units.

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

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

Note 2: A mushroom producer who is also a seller must comply with the requirements of clause 18.14.

Note 3: A mushroom producer who is also a buyer must comply with the requirements of clause 18.15.

Note 4: For offences in relation to how long records must be kept, see regulation 12.

### **18.17 Review of decision**

A producer may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary refusing, under paragraph 18.8B(1)(a), to grant an approval.

## Part 19—Hard onions

### 19.1 Application

This Part applies to hard onions.

### 19.2 Definitions for Part 19

In this Part:

**chargeable onions** means hard onions on which charge is imposed.

**deal** means sell, buy, process or export.

**hard onion** means a bulb of the species *Allium cepa*.

**intermediary amount** means an amount that a person is liable to pay for hard onions because of subsection 7(1), (2) or (3) of the Collection Act.

**leviable onions** means hard onions on which levy is imposed.

**quarter** means the period of 3 months ending on the last day of March, June, September or December in a year.

**retail sale** means a sale of hard onions by a producer, except a sale:

- (a) to a buying agent or through a selling agent; or
- (b) to a first purchaser (including an exporter or a processor); or
- (c) to an exporting agent.

Note 1: Hard onions are chargeable horticultural products—see Part 19 of Schedule 10 to the Customs Charges Regulations.

Note 2: Hard onions are leviable horticultural products—see Part 19 of Schedule 15 to the Excise Levies Regulations.

### 19.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for hard onions is:

- (a) the period beginning on 1 July 2002 and ending at the end of 31 December 2002; and
- (b) after that period—a calendar year.

Note: **Calendar year** is a period of 12 months commencing on 1 January: see paragraph 22(1)(h) of the *Acts Interpretation Act 1901*.

### 19.4 Who is a producer

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

Clause 19.5

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- 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. (Hard onions are chargeable horticultural products under Part 19 of Schedule 10 to the Customs Charges Regulations).

### 19.5 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, chargeable onions 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.

### 19.6 Liability of intermediaries—processors

Hard onions 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.

### 19.7 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 hard onions for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 19.9—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 19.9—on the last day of that period.

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

### 19.8 Who must lodge a quarterly return

- (1) The following persons must lodge a return for a quarter:
    - (a) a selling agent who sells hard onions in the quarter;
    - (b) a buying agent who buys hard onions in the quarter;
    - (c) a first purchaser who buys hard onions in the quarter;
    - (d) a processor who buys hard onions in the quarter;
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- (e) an exporter who exports hard onions in the quarter;
- (f) an exporting agent who exports hard onions 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 quarterly returns in a levy year if:
  - (a) the person has applied under clause 19.14 for an exemption for the year and has not received notice of the Secretary's decision; or
  - (b) the Secretary has granted the person an exemption for the year under clause 19.16, or has continued the person's exemption under clause 19.17; or
  - (c) the Secretary is required, under clause 19.17, to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **19.9 When must a quarterly return be lodged**

A return for a quarter 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.

### **19.10 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 onions for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 19.12—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 19.12—on that day.

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

### **19.11 Who must lodge an annual return**

A return for a levy year must be lodged by:

- (a) a person who:
  - (i) in relation to a quarter in the levy year, is mentioned in subclause 19.8(1); and
  - (ii) is exempt from lodging quarterly returns in the levy year under clause 19.16 or 19.17; and
- (b) a producer who sells hard onions by retail sale in the levy year.

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

### **19.12 When must an annual return be lodged**

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

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

### 19.13 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:

- (a) for leviable onions dealt with by the person lodging the return:
  - (i) the quantity, in tonnes, of hard onions; and
  - (ii) the amount of levy payable for the onions; and
  - (iii) the amount of levy paid by the person for the onions, noting separately the amount paid as an intermediary amount; and
- (b) for chargeable onions dealt with by the person lodging the return:
  - (i) the quantity, in tonnes, of hard onions; and
  - (ii) the amount of charge payable for the onions; and
  - (iii) the amount of charge paid by the person for the onions, noting separately the amount paid as an intermediary amount.

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

### 19.14 Exemption from lodging quarterly returns

- (1) A person may apply for exemption from the requirement to lodge quarterly returns in a levy year if the person has reasonable grounds for believing that the quantity of hard onions with which the person will, or is likely to, deal in the year is less than 1 250 tonnes.
- (2) A reference in subclause (1) to the quantity of hard onions with which a person will, or is likely to, deal in a levy year is a reference to:
  - (a) any quantity of hard onions for which the person is, or may become, liable to pay charge or levy for the year; and
  - (b) any quantity of hard onions for which the person is, or may become, liable to pay an amount under subsection 7(1), (2) or (3) of the Collection Act.

### 19.15 Form of application for exemption

- (1) An application for exemption must include:
  - (a) the applicant's personal details; and
  - (b) a statement to the effect that:
    - (i) the applicant is, or may become, liable to pay charge or levy on hard onions for the levy year; or
    - (ii) the applicant is, or may become, liable to pay an intermediary amount on hard onions for the levy year; and
  - (c) a statement to the effect that the applicant believes that the quantity of hard onions for which the applicant is, or may become, liable to pay charge or levy for the levy year will be less than 1 250 tonnes.
- (2) An application must be sent to the Secretary's postal address.



### **19.16 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 an exemption from the requirement to lodge quarterly returns for a levy year, the Secretary must have regard to:
  - (a) the amount of charge or levy, or intermediary amount, payable by the applicant for the preceding levy year; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7(1), (2) or (3) of the Collection Act in the levy year to which the application relates.

### **19.17 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns in a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next 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 charge or levy, or intermediary amount, payable by the applicant for the preceding levy year; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7(1), (2) or (3) of the Collection Act in the next levy year.

### **19.18 When must a quarterly return be lodged if exemption refused or not continued**

If a person receives notice of a refusal to grant, or of a refusal to continue, an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in 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.

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

### **19.19 What records must be kept**

- (1) A producer who, in a quarter or levy year, is liable to pay levy or charge on hard onions must keep a record, for the quarter or levy year, of:
  - (a) the quantity, in tonnes, of hard onions the producer dealt with in the quarter or levy year; and
  - (b) the amount of charge payable on the export of hard onions; and

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- (c) the amount of charge paid on the export of hard onions; and
- (d) the amount of levy payable on hard onions; and
- (e) the amount of levy paid on hard onions; and
- (f) the name and business or residential address of each other person with whom the producer dealt with hard onions (except by retail sale); and
- (g) the quantity, in tonnes, of hard onions for export the producer dealt with in the quarter or levy year; and
- (h) the quantity, in tonnes, of hard onions, other than hard onions for export, the producer dealt with (except by retail sale); and
- (i) the quantity, in tonnes, of hard onions the producer sold by retail sale.

Penalty: 10 penalty units.

- (2) A person mentioned in subclause 19.8(1) who is liable to pay an amount for hard onions must keep a record, for each quarter or levy year, of:
- (a) the quantity, in tonnes, of hard onions the person dealt with in the quarter or levy year; and
  - (b) any intermediary amount payable for the hard onions; and
  - (c) any intermediary amount paid for the hard onions; and
  - (d) the name and business or residential address of each other person with whom the person dealt with hard onions (except by retail sale); and
  - (e) the quantity, in tonnes, of hard onions for export the person dealt with in the quarter or levy year; and
  - (f) the quantity, in tonnes, of hard onions the person dealt with in the quarter or levy year, other than hard onions:
    - (i) for export; or
    - (ii) dealt with by retail sale; and
  - (g) the quantity, in tonnes, of hard onions the person sold by retail sale in the quarter or levy year.

Penalty: 10 penalty units.

- (3) In recording a dealing for this regulation, the kind of dealing must be described.
- (4) An offence under subclause (1) or (2) is an offence of strict liability.

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

Note 2: For requirements regarding records in relation to NRS levies, see Division 3 of Part 11 of the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*.

Note 3: For offences in relation to how long records must be kept, see regulation 12.

## 19.20 Review of decisions

A person may apply to the Administrative Appeals Tribunal for the review of a decision by the Secretary:

- (a) refusing under paragraph 19.16(1)(a) to grant an exemption; or
- (b) refusing under paragraph 19.17(1)(a) to continue an exemption.

## Part 20—Table grapes

### 20.1 Application

This Part applies to table grapes.

### 20.2 Definitions for Part 20

In this Part:

**chargeable table grapes** means table grapes on which charge is imposed.

**deal** means sell, buy or export.

**exporter**, for chargeable table grapes, means the producer of the table grapes 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 grapes** means grapes containing not less than 60% of moisture by mass.

**leviable table grapes** means table grapes that are not exempt from levy under clause 20.2 of Schedule 15 to the Excise Levies Regulations.

**retail sale**, for a sale of table grapes by a producer, means a sale by the producer of the table grapes except a sale:

- (a) to a first purchaser; or
- (b) through a selling agent, buying agent or exporting agent; or
- (c) at a wholesale produce market.

**table grapes** means fresh grapes other than fresh grapes that are **prescribed goods** on which levy is imposed under Schedule 13 or 26 to the Excise Levies Act.

Note 1: Fresh grapes destined for processing as wine or preserved product are dealt with under Schedule 13 or 26 to the Excise Levies Act.

Note 2: Table grapes are chargeable horticultural products—see Part 20 of Schedule 10 to the Customs Charges Regulations.

Note 3: Table grapes are leviable horticultural products—see Part 20 of Schedule 15 to the Excise Levies Regulations.

### 20.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for table grapes is a financial year.

## 20.4 Who is a producer

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, table grapes 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.

## 20.5 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, table grapes 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.

## 20.6 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 table grapes for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 20.8.

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

## 20.7 Who must lodge a quarterly return

The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys table grapes in the quarter;
- (b) a buying agent who buys table grapes in the quarter;
- (c) a selling agent who sells table grapes in the quarter;
- (d) an exporter who exports table grapes in the quarter;
- (e) an exporting agent who exports table grapes in the quarter;
- (f) a producer who sells table grapes other than by retail sale in the quarter.

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

## 20.8 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.

## **20.9 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 table grapes for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 20.11.

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

## **20.10 Who must lodge an annual return**

A producer who sells leviable table grapes by retail sale in a levy year must lodge a return for the levy year.

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

## **20.11 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.

## **20.12 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:

- (a) the quantity of leviable and chargeable table grapes dealt with by the person lodging the return; and
- (b) the amount of levy and charge payable for the table grapes; and
- (c) the amount of levy and charge paid by that person for the table grapes.

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

## **20.13 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter, or levy year, as the case requires:

- (a) the quantity of table grapes sold by the producer by retail sale; and
- (b) the amount of levy payable on the table grapes; and
- (c) the amount of levy paid by the producer for the table grapes.

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.

## **20.14 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:
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- (a) the quantity of table grapes bought by the first purchaser or agent; and
- (b) the amount of levy payable on the table grapes; and
- (c) the amount of levy paid by the first purchaser or agent for the table grapes.

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.

### 20.15 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 table grapes exported by the exporter or agent; and
- (b) the amount of charge payable on the table grapes; and
- (c) the amount of charge paid by the exporter or agent for the table grapes.

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.

### 20.16 What records must be kept—selling agents

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

- (a) the quantity of table grapes sold by the agent; and
- (b) the amount of levy payable on the table grapes; and
- (c) the amount of levy paid by the agent for the table grapes.

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.

## Part 21—Mangoes

### 21.1 Application

This Part applies to mangoes.

### 21.2 Definitions for Part 21

In this Part:

**chargeable mangoes** means mangoes on which charge is imposed.

**deal** means sell, buy or export.

**exporter**, for chargeable mangoes, means the producer of the mangoes 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.

**leviable mangoes** means mangoes that are not exempt from levy under clause 21.2 of Schedule 15 to the Excise Levies Regulations.

**retail sale**, for a sale of mangoes by a producer, means a sale by the producer of the mangoes except a sale:

- (a) to a first purchaser; or
- (b) through a selling agent, buying agent or exporting agent; or
- (c) at a wholesale produce market.

Note 1: Mangoes are chargeable horticultural products—see Part 21 of Schedule 10 to the Customs Charges Regulations.

Note 2: Mangoes are leviable horticultural products—see Part 21 of Schedule 15 to the Excise Levies Regulations.

### 21.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for mangoes is a financial year.

### 21.4 What is not a process

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

- (a) fruit conditioning processes including storage and ripening;
- (b) cleaning;
- (c) sorting;
- (d) grading;
- (e) packing.

### 21.5 Who is a producer

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

### 21.6 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, mangoes 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.

### 21.7 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 mangoes for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 21.9.

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

### 21.8 Who must lodge a quarterly return

The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys mangoes in the quarter;
- (b) a buying agent who buys mangoes in the quarter;
- (c) a selling agent who sells mangoes in the quarter;
- (d) an exporter who exports mangoes in the quarter;
- (e) an exporting agent who exports mangoes in the quarter;
- (f) a producer who sells mangoes other than by retail sale in the quarter.

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

### 21.9 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.



### **21.10 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 mangoes for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 21.12.

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

### **21.11 Who must lodge an annual return**

A producer who sells leviable mangoes by retail sale in a levy year must lodge a return for the levy year.

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

### **21.12 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.

### **21.13 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:

- (a) the quantities of leviable and chargeable mangoes dealt with by the person lodging the return; and
- (b) the amounts of levy and charge payable for the mangoes; and
- (c) the amounts of levy and charge paid by that person for the mangoes.

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

### **21.14 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter, or levy year, as the case requires:
  - (a) the quantity of mangoes sold by the producer by retail sale; and
  - (b) the amount of levy payable on the mangoes; and
  - (c) the amount of levy paid by the producer for the mangoes.

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.

Clause 21.15

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**21.15 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 mangoes bought by the first purchaser or buying agent; and
  - (b) the amount of levy payable on the mangoes; and
  - (c) the amount of levy paid by the first purchaser or buying agent for the mangoes.

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.

**21.16 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 mangoes exported by the exporter or exporting agent; and
  - (b) the amount of charge payable on the mangoes; and
  - (c) the amount of charge paid by the exporter or exporting agent for the mangoes.

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.

**21.17 What records must be kept—selling agents**

- (1) A selling agent must keep records showing, in respect of each quarter:
- (a) the quantity of mangoes sold by the selling agent; and
  - (b) the amount of levy payable on the mangoes; and
  - (c) the amount of levy paid by the selling agent for the mangoes.

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.

## Part 22—Papaya

### 22.1 Application

This Part applies to papaya.

### 22.2 Definitions for Part 22

In this Part:

**chargeable papaya** means papaya on which charge is imposed.

**deal** means sell, buy, process or export.

**exporter**, for chargeable papaya, means the producer of the papaya 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.

**leviable papaya** means papaya that is not exempt from levy under clause 22.3 of Schedule 15 to the Excise Levies Regulations.

**papaya** means fruit of the plant *carica papaya*.

Note: Papaya is also known as pawpaw, papaw and paw paw.

**retail sale**, for a sale of papaya by a producer, means a sale by the producer of the papaya except a sale:

- (a) to a first purchaser; or
- (b) through a selling agent, buying agent or exporting agent; or
- (c) at a wholesale produce market.

Note 1: Papayas are chargeable horticultural products—see Part 22 of Schedule 10 to the Customs Charges Regulations.

Note 2: Papayas are leviable horticultural products—see Part 22 of Schedule 15 to the Excise Levies Regulations.

### 22.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for papaya is a financial year.

### 22.4 What is not a process

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

- (a) fruit conditioning operations including storage and ripening;
- (b) cleaning;

Clause 22.5

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- (c) sorting;
- (d) grading;
- (e) packing.

## 22.5 Who is a processor

Papaya is 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 processes 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.

## 22.6 Who is a producer

For paragraph (b) of the definition of *producer* in subsection 4(1) of the Collection Act, papaya is 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.

## 22.7 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, papayas 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.

## 22.8 Liability of intermediaries—processors

Papaya is 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, any penalty for late payment imposed by subsection 15(1) of the Collection Act.

### **22.9 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 papaya for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 22.11.

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

### **22.10 Who must lodge a quarterly return**

The following persons who deal in leviable or chargeable papayas in a quarter, must lodge a return for a quarter:

- (a) a first purchaser who buys papayas in the quarter;
- (b) a buying agent who buys papayas in the quarter;
- (c) a selling agent who sells papayas in the quarter;
- (d) an exporter who exports papayas in the quarter;
- (e) an exporting agent who exports papayas in the quarter;
- (f) a processor who processes papayas in the quarter;
- (g) a producer who sells papayas other than by retail sale in the quarter.

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

### **22.11 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.

### **22.12 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 papaya for a levy year is due for payment on 28 August in the following levy year.

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

### **22.13 Who must lodge an annual return**

A producer who sells leviable papayas by retail sale in a levy year must lodge a return for the levy year.

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

### **22.14 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.

### **22.15 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:

- (a) the quantities of leviable and chargeable papayas dealt with by the person lodging the return; and
- (b) the amounts of levy and charge payable for the papayas; and
- (c) the amounts of levy and charge paid by that person for the papayas.

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

### **22.16 What records must be kept—producers**

- (1) A producer who deals in leviable or chargeable papayas in a levy year must keep records showing, in respect of each quarter, or levy year, as the case requires:
  - (a) the quantity of papayas sold by the producer by retail sale; and
  - (b) the amount of levy payable on the papayas; and
  - (c) the amount of levy paid by the producer for the papayas.

Penalty: 10 penalty units.

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

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

### **22.17 What records must be kept—first purchasers, agents and processors**

- (1) A first purchaser, a selling agent, a buying agent or a processor who deals in leviable or chargeable papayas in a quarter must keep records showing, in respect of each quarter:
  - (a) the quantity of papayas dealt with by the first purchaser, agent or processor; and
  - (b) the amount of levy and charge payable on the papayas; and
  - (c) the amount of levy and charge paid by the first purchaser, agent or processor for the papayas.

Penalty: 10 penalty units.

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

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

### **22.18 What records must be kept—exporters and exporting agents**

- (1) An exporter or exporting agent who deals in chargeable papayas in a quarter must keep records showing, in respect of each quarter:
  - (a) the quantity of papayas exported by the exporter or exporting agent; and
  - (b) the amount of charge payable on the papayas; and
  - (c) the amount of charge paid by the exporter or exporting agent for the papayas.

Penalty: 10 penalty units.

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

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

## Part 23—Lychees

### 23.1 Application

This Part applies to lychees.

### 23.2 Definitions for Part 23

In this Part:

**chargeable lychees** means lychees on which charge is imposed.

**deal** means sell, buy or export.

**exporter**, for chargeable lychees, means the producer of the lychees 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.

**leviable lychees** means lychees that are not exempt from levy under clause 23.3 of Schedule 15 to the Excise Levies Regulations.

**lychee** means fruit of the tree *Litchi chinensis*.

**retail sale**, for a sale of lychees by a producer, means a sale by the producer of the lychees except a sale:

- (a) to a first purchaser; or
- (b) through a selling agent, buying agent or exporting agent; or
- (c) at a wholesale produce market.

Note 1: Lychees are chargeable horticultural products—see Part 23 of Schedule 10 to the Customs Charges Regulations.

Note 2: Lychees are leviable horticultural products—see Part 23 of Schedule 15 to the Excise Levies Regulations.

### 23.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for lychees is a financial year.

### 23.4 What is not a process

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

- (a) cleaning;
- (b) sorting;
- (c) grading;



(d) packing.

### 23.5 Who is a processor

Lychees 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 processes 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.

### 23.6 Who is a producer

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

### 23.7 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, lychees 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.

### 23.8 Liability of intermediaries—processors

Lychees 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.

Clause 23.9

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**23.9 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 lychees for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 23.11.

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

**23.10 Who must lodge a quarterly return**

The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys lychees in the quarter;
- (b) a buying agent who buys lychees in the quarter;
- (c) a selling agent who sells lychees in the quarter;
- (d) an exporter who exports lychees in the quarter;
- (e) an exporting agent who exports lychees in the quarter;
- (f) a processor who processes lychees in the quarter;
- (g) a producer who sells lychees other than by retail sale in the quarter.

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

**23.11 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.

**23.12 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 lychees for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 23.14.

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

**23.13 Who must lodge an annual return**

A producer who sells leviable lychees by retail sale in a levy year must lodge a return for the levy year.

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

**23.14 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.

### **23.15 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:

- (a) the quantities of leviable and chargeable lychees dealt with by the person lodging the return; and
- (b) the amounts of levy and charge payable for the lychees; and
- (c) the amounts of levy and charge paid by that person for the lychees.

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

### **23.16 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter, or levy year, as the case requires:
  - (a) the quantity of lychees sold by the producer by retail sale; and
  - (b) the amount of levy payable on the lychees; and
  - (c) the amount of levy paid by the producer for the lychees.

Penalty: 10 penalty units.

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

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

### **23.17 What records must be kept—first purchasers, buying or selling agents and processors**

- (1) A first purchaser, a selling agent, a buying agent or a processor who deals in leviable or chargeable lychees in a quarter must keep records showing, in respect of the quarter:
  - (a) the personal details of the producer of the lychees; and
  - (b) the date the lychees were received by the first purchaser, agent or processor; and
  - (c) the quantity of lychees dealt with by the first purchaser, agent or processor; and
  - (d) the amount of levy and charge payable on the lychees; and
  - (e) the amount of levy and charge paid by the first purchaser, agent or processor for the lychees.

Penalty: 10 penalty units.

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

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

### **23.18 What records must be kept—exporters and exporting agents**

- (1) An exporter or exporting agent who deals in chargeable lychees in a quarter must keep records showing, in respect of the quarter:
    - (a) the personal details of the producer of the lychees; and
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Clause 23.18

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- (b) the date the lychees were received by the exporter or exporting agent; and
- (c) the quantity of lychees exported by the exporter or exporting agent; and
- (d) the amount of charge payable on the lychees; and
- (e) the amount of charge paid by the exporter or exporting agent for the lychees.

Penalty: 10 penalty units.

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

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

## Part 24—Persimmons

### 24.1 Application

This Part applies in relation to persimmons.

### 24.2 Definitions for Part 24

In this Part:

**chargeable persimmons** means persimmons on which charge is imposed.

**deal** means sell, buy or export.

**exporter**, for chargeable persimmons, means the producer of the persimmons 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.

**leviable persimmons** means persimmons that are not exempt from levy under clause 24.2 of Schedule 15 to the Excise Levies Regulations.

**retail sale**, for a sale of persimmons by a producer, means a sale by the producer of the persimmons except a sale:

- (a) to a first purchaser; or
- (b) through a selling agent, buying agent or exporting agent; or
- (c) at a wholesale produce market.

Note 1: Persimmons are chargeable horticultural products—see Part 24 of Schedule 10 to the Customs Charges Regulations.

Note 2: Persimmons are leviable horticultural products—see Part 24 of Schedule 15 to the Excise Levies Regulations.

### 24.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for persimmons is a financial year.

### 24.4 Who is a producer

For paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act, persimmons 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

Clause 24.5

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- (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.

### 24.5 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, persimmons 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.

### 24.6 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 persimmons for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 24.8.

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

### 24.7 Who must lodge a quarterly return

The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys persimmons in the quarter;
- (b) a buying agent who buys persimmons in the quarter;
- (c) a selling agent who sells persimmons in the quarter;
- (d) an exporter who exports persimmons in the quarter;
- (e) an exporting agent who exports persimmons in the quarter;
- (f) a producer who sells persimmons other than by retail sale in the quarter.

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

### 24.8 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.

### 24.9 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 persimmons for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 24.11.

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

### **24.10 Who must lodge an annual return**

A producer who sells leviable persimmons by retail sale in a levy year must lodge a return for the levy year.

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

### **24.11 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.

### **24.12 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:

- (a) the quantities of leviable and chargeable persimmons dealt with by the person lodging the return; and
- (b) the amounts of levy and charge payable for the persimmons; and
- (c) the amounts of levy and charge paid by that person for the persimmons.

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

### **24.13 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter, or levy year, as the case requires:
  - (a) the quantity of persimmons sold by the producer by retail sale; and
  - (b) the amount of levy payable on the persimmons; and
  - (c) the amount of levy paid by the producer for the persimmons.

Penalty: 10 penalty units.

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

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

### **24.14 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 persimmons bought by the first purchaser or buying agent; and
  - (b) the amount of levy payable on the persimmons; and
  - (c) the amount of levy paid by the first purchaser or buying agent for the persimmons.

Penalty: 10 penalty units.

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

Clause 24.15

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

**24.15 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 persimmons exported by the exporter or exporting agent; and
  - (b) the amount of charge payable on the persimmons; and
  - (c) the amount of charge paid by the exporter or exporting agent for the persimmons.

Penalty: 10 penalty units.

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

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

**24.16 What records must be kept—selling agents**

- (1) A selling agent must keep records showing, in respect of each quarter:
- (a) the quantity of persimmons sold by the selling agent; and
  - (b) the amount of levy payable on the persimmons; and
  - (c) the amount of levy paid by the selling agent for the persimmons.

Penalty: 10 penalty units.

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

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



## Part 25—Rubus (raspberry, blackberry, etc)

### 25.1 Application

This Part applies to fruit of plants of the genus *Rubus*.

### 25.2 Definitions for Part 25

In this Part:

**chargeable rubus** means rubus on which charge is imposed.

**deal** means sell, buy or export.

**exporter**, for chargeable rubus, means the producer of the rubus 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.

**leviable rubus** means rubus that are not exempt from levy under clause 25.3 of Schedule 15 to the Excise Levies Regulations.

**rubus** means fruit of plants of the genus *Rubus*.

Note 1: Rubus are chargeable horticultural products—see Part 25 of Schedule 10 to the Customs Charges Regulations.

Note 2: Rubus are leviable horticultural products—see Part 25 of Schedule 15 to the Excise Levies Regulations.

### 25.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for rubus is a financial year.

### 25.4 What is not a process

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

- (a) cleaning;
- (b) sorting;
- (c) grading;
- (d) packing.

### 25.5 Who is a producer

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

Clause 25.6

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- 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.

### 25.6 Liability of intermediaries—exporting agents

For subsection 7(3) of the Collection Act, rubus 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.

### 25.7 When is charge or levy due for payment—people who lodge quarterly returns

For section 6 of the Collection Act, charge or levy payable for a quarter on rubus is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 25.9.

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

### 25.8 Who must lodge a quarterly return

- (1) The following persons must lodge a return for a quarter:
  - (a) a first purchaser who buys rubus in the quarter;
  - (b) a buying agent who buys rubus in the quarter;
  - (c) a selling agent who sells rubus in the quarter;
  - (d) an exporter who exports rubus in the quarter;
  - (e) an exporting agent who exports rubus in the quarter;
  - (f) a producer who sells leviable rubus in the quarter.

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

- (2) However, such a person does not have to lodge quarterly returns in a levy year if:
  - (a) the person has applied under clause 25.14 for an exemption for the year and has not received notice of the Secretary's decision; or
  - (b) the Secretary has granted the person an exemption for the year under paragraph 25.16(1)(a), or has continued the person's exemption under paragraph 25.17(1)(a); or
  - (c) the Secretary is required, under paragraph 25.17(1)(a), to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **25.9 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.

### **25.10 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 rubus for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 25.12.

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

### **25.11 Who must lodge an annual return**

A return for a levy year must be lodged by a person mentioned in subclause 25.8(1) if the person was exempted from lodging a quarterly return in the levy year.

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

### **25.12 When must an annual return be lodged**

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

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

### **25.13 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, for the quarter or levy year:

- (a) the quantities of leviable and chargeable rubus dealt with by the person lodging the return; and
- (b) the amounts of levy and charge payable for the rubus; and
- (c) the amounts of levy and charge paid by that person for the rubus.

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

### **25.14 Exemption from lodging quarterly returns**

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

### **25.15 Form of application for exemption**

- (1) An application for exemption must include:

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- (a) the applicant's personal details; and
- (b) a statement by the applicant that:
  - (i) the applicant is, or may become, liable to pay charge or levy on rubus for the levy year; or
  - (ii) the applicant is, or may become, liable to pay an amount under subsection 7(1) or (3) of the Collection Act, in relation to rubus, for the levy year; and
- (c) a statement by the applicant that the applicant believes that the sum of charge and levy on rubus 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.

### **25.16 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 an exemption from the requirement to lodge quarterly returns for a levy year, the Secretary must have regard to:
  - (a) the amount of charge or levy, or intermediary amount, payable by the applicant for the preceding levy year; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7(1), (2) or (3) of the Collection Act in the levy year to which the application relates.

### **25.17 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns in a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) In deciding whether to continue a person's exemption, the Secretary must have regard to:
  - (a) the amount of charge or levy, or intermediary amount, payable by the applicant for the preceding levy year; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7(1), (2) or (3) of the Collection Act in the next levy year.

### **25.18 When must a quarterly return be lodged if exemption refused or not continued**

If a person receives notice of a refusal to grant, or of a refusal to continue, an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in 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.

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

### **25.19 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of a quarter:
  - (a) the quantity of leviable rubus sold by the producer in the quarter; and
  - (b) the amount of levy payable on the rubus; and
  - (c) the amount of levy paid by the producer for the rubus.

Penalty: 10 penalty units.

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

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

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

### **25.20 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 a quarter:
  - (a) the quantity of rubus bought by the first purchaser or buying agent in the quarter; and
  - (b) the amount of levy payable on the rubus; and
  - (c) the amount of levy paid by the first purchaser or buying agent for the rubus.

Penalty: 10 penalty units.

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

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

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

### **25.21 What records must be kept—exporters and exporting agents**

- (1) An exporter or exporting agent must keep records showing, in respect of a quarter:
  - (a) the quantity of rubus exported by the exporter or exporting agent, in the quarter; and
  - (b) the amount of charge payable on the rubus; and

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(c) the amount of charge paid by the exporter or exporting agent for the rubus.

Penalty: 10 penalty units.

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

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

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

### 25.22 What records must be kept—selling agents

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

- (a) the quantity of rubus sold by the selling agent in the quarter; and
- (b) the amount of levy payable on the rubus; and
- (c) the amount of levy paid by the selling agent for the rubus.

Penalty: 10 penalty units.

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

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

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

### 25.23 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 25.16(1)(a); or
- (b) refusing to continue an exemption under paragraph 25.17(1)(a).

## Part 26—Turf

### 26.1 Application

This Part applies in relation to turf.

### 26.2 Definitions for Part 26

In this Part:

**chargeable turf** means turf other than turf that is exempt from charge under clause 26.2 of Schedule 10 to the Customs Charges Regulations.

**deal** means sell, buy or export.

**exporter**, for chargeable turf, means the producer of the turf 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.

**leviable turf** means turf other than turf that is exempt from levy under clause 26.2 of Schedule 15 to the Excise Levies Regulations.

Note 1: Turf is a chargeable horticultural product—see Part 26 of Schedule 10 to the Customs Charges Regulations.

Note 2: Turf is a leviable horticultural product—see Part 26 of Schedule 15 to the Excise Levies Regulations.

### 26.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for turf is a financial year.

### 26.4 Who is a producer

For paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act, turf is 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.

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**26.5 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 turf for a quarter is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 26.7.

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

**26.6 Who must lodge a quarterly return**

- (1) The following persons must lodge a return for a quarter:
  - (a) a producer who sells turf in the quarter;
  - (b) an exporter who exports turf in the quarter.
- (2) However, a person mentioned in subclause (1) need not lodge quarterly returns for a levy year if:
  - (a) the person has applied under clause 26.12 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 the levy year under clause 26.14, or has continued the person's exemption under clause 26.15; or
  - (c) the Secretary is required under clause 26.15 to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

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

**26.7 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.

**26.8 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 turf for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 26.10.

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

**26.9 Who must lodge an annual return**

The following persons must lodge an annual return if the person is exempt from lodging quarterly returns in a levy year:

- (a) a producer who sells leviable turf in the levy year;
- (b) an exporter who exports chargeable turf in the levy year.

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



### **26.10 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.

### **26.11 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:

- (a) the quantities of chargeable and leviable turf dealt with by the person lodging the return; and
- (b) the amounts of charge and levy payable for the turf; and
- (c) the amounts of charge and levy paid by that person for the turf.

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

### **26.12 Exemption from lodging quarterly returns**

A person may apply for exemption from the requirement to lodge quarterly returns for a levy year if the person has reasonable grounds for believing that the total amount of charge and levy that the person is, or is likely to be, liable to pay in the levy year is likely to be less than \$750.

### **26.13 Form of application for exemption**

- (1) An application for an exemption from the requirement to lodge quarterly returns for a levy year must:
  - (a) set out the applicant's personal details; and
  - (b) include a statement to the effect that the applicant is, or is likely to be, liable to pay charge or levy for that levy year; and
  - (c) include a statement to the effect that the applicant believes that the total amount of charge and levy that the applicant is, or is likely to be, liable to pay is likely to be less than \$750 in that levy year.
- (2) An application must be sent to the Secretary's postal address.

### **26.14 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 an exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of charge or levy that the applicant is, or is likely to be, liable to pay for the next levy year; and
  - (b) the amount of charge or levy that the applicant was liable to pay for the immediately preceding levy year.

### **26.15 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) When deciding whether to continue an exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of charge and levy that the applicant is, or is likely to be, liable to pay for the next levy year; and
  - (b) the amount of charge and levy that the applicant was liable to pay for the levy year to which the annual return relates.

### **26.16 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 after receiving the notice; and
- (b) otherwise—within 28 days of the end of the quarter to which the return relates.

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

### **26.17 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of each quarter, or levy year, as the case requires:
  - (a) the quantity of turf sold by the producer by retail sale; and
  - (b) the amount of levy payable on the turf; and
  - (c) the amount of levy paid by the producer for the turf.

Penalty: 10 penalty units.

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

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

### **26.18 What records must be kept—exporters**

- (1) An exporter must keep records showing, in respect of each quarter:
  - (a) the quantity of turf exported by the exporter; and
  - (b) the amount of charge payable on the turf; and
  - (c) the amount of charge paid by the exporter for the turf.

Penalty: 10 penalty units.

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

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

### **26.19 Review of decisions**

A producer may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary:

- (a) refusing under paragraph 26.14(1)(a) to grant an exemption; or
- (b) refusing under paragraph 26.15(1)(a) to continue an exemption.

## Part 27—Bananas

### 27.1 Application

This Part applies to bananas.

### 27.2 Definitions for Part 27

In this Part:

**banana** means a fruit of any species of the genus *Musa*.

**deal** means sell or buy.

**leviable bananas** means bananas that are not exempt from levy under clause 27.2 of Schedule 15 to the Excise Levies Regulations.

**retail sale**, for a sale of bananas by a producer, means a sale by the producer of the bananas except a sale:

- (a) to a first purchaser; or
- (b) through a selling agent, buying agent or exporting agent; or
- (c) at a wholesale produce market.

Note: Bananas are leviable horticultural products—see Part 27 of Schedule 15 to the Excise Levies Regulations.

### 27.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for bananas is a financial year.

### 27.4 What is not a process

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

- (a) fruit conditioning processes including storage and ripening;
- (b) cleaning;
- (c) sorting;
- (d) grading;
- (e) packing.

### 27.5 Who is a producer

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

Note: 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.

### **27.6 When is levy due for payment—people who lodge quarterly returns**

For section 6 of the Collection Act, a levy payable for a quarter on bananas is due for payment on the last day on which the quarterly return for the quarter must be lodged under clause 27.8.

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

### **27.7 Who must lodge a quarterly return**

- (1) The following persons must lodge a return for a quarter:
    - (a) a first purchaser who buys bananas in the quarter;
    - (b) a buying agent who buys bananas in the quarter;
    - (c) a selling agent who sells bananas in the quarter;
    - (d) a producer who sells leviable bananas other than by retail sale in the quarter.
- Note: For offences in relation to returns, see section 24 of the Collection Act.
- (2) However, such a person does not have to lodge quarterly returns in a levy year if:
    - (a) the person has applied under clause 27.13 for an exemption for the year and has not received notice of the Secretary's decision; or
    - (b) the Secretary has granted the person an exemption for the year under paragraph 27.15(1)(a), or has continued the person's exemption under paragraph 27.16(1)(a); or
    - (c) the Secretary is required, under paragraph 27.16(1)(a), to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **27.8 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.

### **27.9 When is levy due for payment—people who lodge annual returns**

For section 6 of the Collection Act, a levy payable on bananas for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 27.11.

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

### **27.10 Who must lodge an annual return**

- (1) A producer who sells leviable bananas by retail sale in a levy year must lodge a return for the levy year.
- (2) A return for a levy year must be lodged by a person mentioned in subclause 27.7(1) if the person was exempted from lodging a quarterly return in the levy year.

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

### **27.11 When must an annual return be lodged**

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

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

### **27.12 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, for the quarter or levy year:

- (a) the quantities of leviable bananas dealt with by the person lodging the return; and
- (b) the amount of levy payable for the bananas; and
- (c) the amount of levy paid by that person for the bananas.

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

### **27.13 Exemption from lodging quarterly returns**

A person may apply for exemption from the requirement to lodge quarterly returns in a levy year if the person has reasonable grounds for believing that the sum of levy on bananas that the person will pay, or be likely to pay, in the levy year, will be less than \$500.

### **27.14 Form of application for exemption**

- (1) An application for exemption 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 on bananas for the levy year; or
      - (ii) the applicant is, or may become, liable to pay an amount under subsection 7(1) or (3) of the Collection Act, in relation to bananas, for the levy year; and
    - (c) a statement by the applicant that the applicant believes that the sum of levy on bananas 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.
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### **27.15 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) In deciding whether to grant an exemption from the requirement to lodge quarterly returns for a levy year, the Secretary must have regard to:
  - (a) the amount of levy, or intermediary amount, payable by the applicant for the preceding levy year; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7(1), (2) or (3) of the Collection Act in the levy year to which the application relates.

### **27.16 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns in a levy year lodges an annual return for that year, the Secretary must, within 14 days after receiving the return:
  - (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) In deciding whether to continue a person's exemption, the Secretary must have regard to:
  - (a) the amount of levy, or intermediary amount, payable by the applicant for the preceding levy year; and
  - (b) any information that is available to the Secretary about the amount of liability the applicant is likely to incur under subsection 7(1), (2) or (3) of the Collection Act in the next levy year.

### **27.17 When must a quarterly return be lodged if exemption refused or not continued**

If a person receives notice of a refusal to grant, or of a refusal to continue, an exemption from the requirement to lodge quarterly returns in a levy year, the person must lodge a return for each quarter in 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.

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

### **27.18 What records must be kept—producers**

- (1) A producer must keep records showing, in respect of a quarter, or levy year, as the case requires:
  - (a) the quantity of leviable bananas sold by the producer in the quarter; and
  - (b) the amount of levy payable on the bananas; and

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(c) the amount of levy paid by the producer for the bananas.

Penalty: 10 penalty units.

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

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

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

### 27.19 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 a quarter:

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

Penalty: 10 penalty units.

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

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

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

### 27.20 What records must be kept—selling agents

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

- (a) the quantity of bananas sold by the selling agent in the quarter; and
- (b) the amount of levy payable on the bananas; and
- (c) the amount of levy paid by the selling agent for the bananas.

Penalty: 10 penalty units.

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

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

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

### 27.21 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 27.15(1)(a); or
- (b) refusing to continue an exemption under paragraph 27.16(1)(a).



## 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).

## Part 29—Olives

### 29.1 Application

This Part applies to olives.

### 29.2 Definitions for Part 29

In this Part:

*leviable olives* means olives on which levy is imposed under Part 29 of Schedule 15 to the Excise Regulations.

*olive* has the meaning given in clause 29.1 of Part 29 of Schedule 15 to the Excise Regulations.

### 29.3 What is a levy year

For the definition of *levy year* in subsection 4(1) of the Collection Act, the period beginning on 1 October in a year and ending on 30 September in the following year is prescribed for leviable olives.

### 29.4 What is not a process

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

- (a) cleaning;
- (b) sorting;
- (c) grading;
- (d) packing.

### 29.5 Who is a producer

Under paragraph (j) of the definition of *producer* in subsection 4(1) of the Collection Act, the grower of the olives is the producer.

### 29.6 Who is a processor

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

### 29.7 Liability of intermediaries—processors

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

Note: A processor may be liable to pay levy on behalf of a producer—see section 7 of the Collection Act.



### **29.8 When is levy due for payment—annual return**

For section 6 of the Collection Act, levy payable on leviable olives for a levy year is due for payment on the last day on which the annual return for the levy year must be lodged under clause 29.11.

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

### **29.9 Who must lodge an annual return**

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

- (a) a first purchaser who buys leviable olives in the levy year;
- (b) a buying agent who buys leviable olives in the levy year;
- (c) a selling agent who sells leviable olives in the levy year;
- (d) a processor who processes leviable olives in the levy year.

### **29.10 What must be included in an annual return**

In addition to the information required by regulation 10, a person lodging an annual return for a levy year must set out, for the levy year:

- (a) the quantity of leviable olives dealt with by the person in the levy year; and
- (b) the amount of levy payable for the leviable olives for the levy year; and
- (c) the amount of levy paid for the leviable olives.

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

### **29.11 When must an annual return be lodged**

An annual return for a levy year must be lodged on or before 28 October after the end of the levy year to which it relates.

### **29.12 What records must be kept**

- (1) A person who pays levy on leviable olives must keep records showing, for a levy year:
  - (a) the quantity of leviable olives processed, bought or sold by the person in the levy year; and
  - (b) the levy payable on the leviable olives for the levy year; and
  - (c) the levy paid by the person for the leviable olives.

Penalty: 10 penalty units.

- (2) A person commits an offence of strict liability if the person contravenes subclause (1).

Note 1: For offences of 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.

## Part 30—Sweet potatoes

### 30.1 Application

This Part applies to sweet potatoes.

### 30.2 Definitions for Part 30

In this Part:

**exporter** means, in relation to sweet potatoes, the producer of the sweet potatoes within the meaning of paragraph (g) of the definition of **producer** in subsection 4(1) of the Collection Act.

**retail sale** means a sale by a producer, but does not include:

- (a) a sale to a first purchaser; or
- (b) a sale through a selling agent, a buying agent or an exporting agent.

**sweet potato** means the starchy, tuberous roots of the genus and species known as *Ipomoea batatas*.

### 30.3 What is a levy year

For the definition of **levy year** in subsection 4(1) of the Collection Act, a levy year for sweet potatoes is a financial year.

### 30.4 What is not a process

For the definition of **process** in subsection 4(1) of the Collection Act, an operation after harvesting, if the operation does not alter the sweet potatoes from their natural state, is prescribed.

Example: Processing may include canning, bottling, freezing, cooking, pickling, roasting or dehydrating, but does not include washing, grading or packing sweet potatoes, transporting sweet potatoes in their natural state or preparing sweet potatoes for sale in their natural state.

### 30.5 Who is a producer

For paragraph (b) of the definition of **producer** in subsection 4(1) of the Collection Act, sweet potatoes 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.

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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.

### **30.6 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 sweet potatoes for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 30.8—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 30.8—on the last day of that period.

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

### **30.7 Who must lodge a quarterly return**

- (1) The following persons must lodge a return for a quarter:
  - (a) a first purchaser who buys sweet potatoes in the quarter;
  - (b) a buying agent who buys sweet potatoes in the quarter;
  - (c) a selling agent who sells sweet potatoes in the quarter;
  - (d) an exporter who exports sweet potatoes in the quarter;
  - (e) an exporting agent who exports sweet potatoes in the quarter;
  - (f) a producer who sells sweet potatoes other than by retail sale 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 quarterly returns in a levy year if:
  - (a) the person has applied for an exemption under clause 30.13 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 the levy year under clause 30.15, or has continued the person's exemption for the levy year under clause 30.16; or
  - (c) the Secretary is required, under clause 30.16, to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

### **30.8 When must a quarterly return be lodged**

A return for a quarter 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.

### **30.9 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 sweet potatoes for a levy year is due for payment:

Clause 30.10

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- (a) if a return for the year is lodged before the day mentioned in clause 30.11—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 30.11—on that day.

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

### 30.10 Who must lodge an annual return

An annual return for a levy year must be lodged by:

- (a) a person who:
  - (i) is a person described in subclause 30.7(1); and
  - (ii) is exempt from lodging quarterly returns for the levy year under clause 30.15 or 30.16; and
- (b) a producer who sells sweet potatoes by retail sale in the levy year.

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

### 30.11 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.

### 30.12 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:

- (a) the quarters, if any, for which returns have been lodged previously in the levy year by the person lodging the return; and
- (b) for sweet potatoes (except processed sweet potatoes) bought or sold by the person lodging the return in the quarter or levy year for which levy is payable:
  - (i) the amount paid for the sweet potatoes at the first point of sale; and
  - (ii) the amount of levy payable for the sweet potatoes; and
  - (iii) the amount of levy paid by the person for the sweet potatoes; and
- (c) for processed sweet potatoes bought or sold by the person lodging the return in the quarter or levy year for which levy is payable:
  - (i) the amount that would have been paid for the sweet potatoes at the first point of sale, if that sale had occurred before processing; and
  - (ii) the amount of levy payable for the sweet potatoes; and
  - (iii) the amount of levy paid by the person for the sweet potatoes; and
- (d) for sweet potatoes exported by the person lodging the return in the quarter or levy year for which charge is payable:
  - (i) the free on board value of the sweet potatoes immediately prior to export; and
  - (ii) the amount of charge payable for the sweet potatoes; and

- (iii) the amount of charge paid by the person for the sweet potatoes.

Note: For penalty, see section 24 of the Collection Act.

### **30.13 Exemption from lodging quarterly returns**

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

### **30.14 Form of application for exemption**

- (1) An application must include:
  - (a) the following details:
    - (i) the applicant's full name;
    - (ii) the applicant's business or residential address (not the address of a post office box or post office bag);
    - (iii) if the applicant has a post office box or a post office bag address—that address;
    - (iv) the applicant's ABN, if any;
    - (v) if the applicant is a company and does not have an ABN—its ACN;
  - and
  - (b) a statement to the effect that the applicant believes that the applicant has incurred, or is likely to incur, a liability to pay levy or charge on sweet potatoes for the levy year to which the application relates; and
  - (c) a statement to the effect that the applicant believes that the amount of the liability is, or is likely to be, less than \$500.
- (2) An application must be sent to the Secretary's postal address.

### **30.15 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) In deciding whether to grant the exemption, the Secretary must have regard to:
  - (a) information available to the Secretary about the amount of the levy or charge that the applicant is, or is likely to be, liable to pay for the levy year; and
  - (b) the amount of levy or charge that the applicant was liable to pay for the immediately preceding levy year.

### **30.16 Continuation of exemption**

- (1) If a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for the year, the Secretary must, within 14 days after receiving the return:

Clause 30.17

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- (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) When deciding whether to continue an exemption, the Secretary must have regard to:
- (a) information available to the Secretary about the amount of levy or charge that the person is, or is likely to be, liable to pay for the next levy year; and
  - (b) the amount of levy or charge that the person was liable to pay for the levy year to which the annual return relates.

**30.17 When must a quarterly return 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 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.

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

**30.18 What records must be kept**

- (1) The following persons must keep records, in accordance with subclauses (3) and (4), for a levy year:
- (a) a person mentioned in subclause 30.7(1);
  - (b) a producer who sells sweet potatoes by retail sale in the levy year.
- (2) A person commits an offence of strict liability if:
- (a) the person is required under subclause (1) to keep records in accordance with subclauses (3) and (4) for a levy year; and
  - (b) the person fails to comply with the requirement.

Penalty: 10 penalty units.

- (3) For subclause (1), the records must set out the following in respect of the levy year:
- (a) for sweet potatoes (except processed sweet potatoes) bought or sold by the person—the amount paid for the sweet potatoes at the first point of sale;
  - (b) for processed sweet potatoes bought or sold by the person, if unprocessed sweet potatoes of the same kind were sold on the day the sweet potatoes were delivered for processing—the market price of the unprocessed sweet potatoes on that day;
  - (c) for processed sweet potatoes bought or sold by the person, and to which paragraph (b) does not apply—the value of the sweet potatoes immediately before processing;
  - (d) for sweet potatoes exported by the person—the free on board value of the sweet potatoes;
  - (e) the amount of levy and charge payable for the sweet potatoes;

- (f) the amount of levy and charge paid by the person for the sweet potatoes;
- (g) the details mentioned in subclause (4) for each person:
  - (i) to whom sweet potatoes were sold by the person, other than by retail sale; and
  - (ii) from whom sweet potatoes were bought by the person;
- (h) the name and business or residential address (not the address of a post office box or post office bag) of each person to whom sweet potatoes were exported;
- (i) the amount paid, at the first point for sale, for sweet potatoes (except processed sweet potatoes):
  - (i) sold to each person to whom subparagraph (g)(i) applies; and
  - (ii) bought from each person to whom subparagraph (g)(ii) applies;
- (j) the free on board value immediately prior to export, of each consignment of sweet potatoes exported.

Note: For paragraph (3)(c), clause 30.2 of Part 30 of Schedule 15 to the Excise Levies Regulations provides that the value of the sweet potatoes before processing must be substantiated by the producer's financial records in accordance with generally accepted accounting principles.

- (4) For paragraph (3)(g), the details are:
  - (a) the person's full name; and
  - (b) the person's business or residential address (not the address of a post office box or post office bag); and
  - (c) the person's ABN, if any; and
  - (d) if the person is a company and does not have an ABN—its ACN.

### **30.19 Review of decisions**

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

- (a) a decision under paragraph 30.15(1)(a) to refuse to grant an exemption;
- (b) a decision under paragraph 30.16(1)(a) to refuse to continue an exemption.

### **30.20 Application and transitional matters**

#### *Levy year*

- (1) Despite the definition of *levy year* in clause 30.3, the first levy year is taken to be the period:
  - (a) beginning on 1 January 2016; and
  - (b) ending on 30 June 2016.

#### *Exemption from lodging quarterly returns*

- (2) If:
  - (a) a person had been exempt from lodging a quarterly return under clause 17.15 of Part 17 of this Schedule; and

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Clause 30.20

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(b) the exemption was in force immediately before 1 January 2016;  
then the exemption is taken, for the period beginning on 1 January 2016 and  
ending on 30 June 2016, to be an exemption granted under clause 30.15.



## Part 31—Melons

### 31.1 Definitions for the purposes of this Part

In this Part:

**melon** means fruit of any of the following species or varieties:

- (a) *Citrullus lanatus*, commonly called watermelon;
- (b) *Cucumis melo*, commonly called rockmelon;
- (c) *Cucumis melo* var. *cantalupensis*, commonly called charentais melon;
- (d) *Cucumis melo* var. *inodorus*, commonly called honeydew or piel de sapo;
- (e) *Cucumis melo* var. *makuwa*, commonly called Korean melon;
- (f) *Cucumis melo* var. *reticulatus*, commonly called galia melon or hami melon;
- (g) *Cucumis metuliferus*, commonly called horned melon.

**retail sale** of melons means sale by the producer, except to a first purchaser (including an exporter) or through a selling agent, a buying agent or an exporting agent.

### 31.2 What is a levy year

For the purposes of the definition of **levy year** in subsection 4(1) of the Collection Act, a financial year is prescribed for melons on which levy or charge is imposed.

### 31.3 Who is a producer

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

Note 1: As a result, under that paragraph, a person is a producer of melons if the person:

- (a) owns melons immediately after they are harvested; or
- (b) would have owned melons then apart from a marketing law that vested them in another person or body or in the Crown in right of a State at or before the time the melons are harvested.

Note 2: An exporter of melons on which charge is imposed is also a producer of the melons under paragraph (g) of that definition.

### 31.4 Liability of intermediaries—exporting agents

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

Note: As a result, under that subsection, an exporting agent who exports melons on which charge is imposed is liable to pay, on behalf of the person for whom the agent is exporting the melons, an amount equal to that charge and any late payment penalty relating to that charge.

Clause 31.5

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**31.5 When levy or charge is due for payment—people lodging quarterly returns**

For the purposes of section 6 of the Collection Act, levy or charge payable on melons for a quarter is due for payment:

- (a) if a return for the quarter is lodged within the period mentioned in clause 31.7—on the day that the return is lodged; or
- (b) if a return for the quarter is not lodged within the period mentioned in clause 31.7—on the last day of that period.

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

**31.6 Who must lodge a quarterly return**

- (1) The following persons must lodge a return for a quarter:

- (a) a first purchaser who buys melons in the quarter;
- (b) a buying agent who buys melons in the quarter;
- (c) a selling agent who sells melons in the quarter;
- (d) an exporter who exports melons in the quarter;
- (e) an exporting agent who exports melons in the quarter.

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

- (2) However, a person does not have to lodge a return for a quarter in a levy year if:

- (a) the person has applied under clause 31.12 for an exemption for the year and has not received notice of the Secretary's decision; or
- (b) the Secretary has granted the person an exemption for the year under clause 31.14 or has continued the person's exemption; or
- (c) the Secretary is required, under clause 31.15, to decide whether to continue the person's exemption and the person has not received notice of the Secretary's decision.

**31.7 When a quarterly return must be lodged**

A return for a quarter must be lodged within 28 days after the end of the quarter.

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

**31.8 When levy or charge is due for payment—people lodging annual returns**

For the purposes of section 6 of the Collection Act, levy or charge payable on melons for a levy year is due for payment:

- (a) if a return for the year is lodged before the day mentioned in clause 31.10—on the day that the return is lodged; or
- (b) if a return for the year is not lodged before the day mentioned in clause 31.10—on that day.

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

**31.9 Who must lodge an annual return**

A return for a levy year must be lodged by:

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- (a) a person who:
  - (i) in relation to a quarter in the levy year, is mentioned in subclause 31.6(1); and
  - (ii) is exempt from lodging returns for quarters in the levy year under clause 31.14 or 31.15; and
- (b) a producer who sells more than 20 tonnes of melons by retail sale in the levy year.

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

### **31.10 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 relating to returns, see section 24 of the Collection Act.

### **31.11 What must be included in a return**

A return for a quarter or levy year must state, for the quarter or levy year:

- (a) for melons on which levy is imposed that the person lodging the return bought or sold:
  - (i) the quantity of the melons, in kilograms; and
  - (ii) the amount of levy payable for the melons; and
  - (iii) the amount of levy, or liability under subsection 7(1) of the Collection Act relating to levy, paid by the person for the melons; and
- (b) for melons on which charge is imposed that the person lodging the return exported:
  - (i) the quantity of the melons, in kilograms; and
  - (ii) the amount of charge payable for the melons; and
  - (iii) the amount of charge, or liability under subsection 7(3) of the Collection Act relating to charge, paid by the person for the melons.

Note: Regulation 10 also requires a declaration and other information to be included in the return.

### **31.12 Application for exemption from lodging a quarterly return**

A person may apply for exemption from the requirement to lodge returns for quarters in a levy year if the person has reasonable grounds for believing that the sum of levy, charge, and any liability under subsection 7(1) or (3) of the Collection Act, payable by the person will be less than \$500.

### **31.13 Form of application for exemption**

- (1) An application for exemption must include the applicant's personal details.
- (2) If the applicant is a first purchaser, buying agent or selling agent, the application must include a statement to the effect that:

Clause 31.14

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- (a) the applicant will, or may, incur a liability under subsection 7(1) of the Collection Act for the levy year to which the application relates; and
  - (b) the applicant believes that the liability will be less than \$500.
- (3) If the applicant is an exporter other than an exporting agent, the application must include a statement to the effect that:
- (a) the applicant will, or may, be liable to pay charge for the levy year to which the application relates; and
  - (b) the applicant believes that the charge will be less than \$500.
- (4) If the applicant is an exporting agent, the application must include a statement to the effect that:
- (a) the applicant will, or may, incur a liability under subsection 7(3) of the Collection Act for the levy year to which the application relates; and
  - (b) the applicant believes that the amount of the liability will be less than \$500.
- (5) An application must be sent to the Secretary's postal address.

### 31.14 Grant or refusal of exemption

- (1) Within 14 days after receiving an application, the Secretary must:
- (a) decide whether to grant the exemption; and
  - (b) give the applicant written notice of the decision.
- (2) When deciding whether to grant an exemption from the requirement to lodge returns for quarters in a levy year, the Secretary must have regard to:
- (a) the amount of levy or charge payable by the applicant in respect of the preceding levy year; and
  - (b) any information that is available to the Secretary about the liability the applicant is likely to incur under subsection 7(1) or (3) of the Collection Act in respect of the levy year to which the application relates.

### 31.15 Continuation of exemption

- (1) If a person who is exempt from lodging returns for quarters in a levy year lodges an annual return for the year, the Secretary must, within 14 days of receiving the return:
- (a) decide whether to continue the exemption for the next levy year; and
  - (b) give the person written notice of the decision.
- (2) When deciding whether to continue the 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) or (3) of the Collection Act, for the previous levy year; and
  - (b) any information that is available to the Secretary about the liability the person is likely to incur under subsection 7(1) or (3) of the Collection Act for the next levy year.

### **31.16 When quarterly return must be lodged if exemption refused or not continued**

If a person receives notice of a refusal to grant an exemption from the requirement to lodge returns for quarters in a levy year, or to continue for a levy year an exemption from the requirement to lodge returns for quarters in the year, the person must lodge a return for each quarter in the year:

- (a) if the quarter ended before the person receives the notice—within 28 days of receiving the notice; and
- (b) otherwise—within 28 days after the end of the quarter.

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

### **31.17 What records must be kept**

- (1) A person who is a producer of melons or is described in subclause 31.6(1) in relation to a quarter in a levy year must keep records setting out for the year:
  - (a) the quantities, in kilograms, of melons bought, sold (by retail sale or otherwise) or exported by the person; and
  - (b) the amount of levy, charge or liability under subsection 7(1) or (3) of the Collection Act payable for each of those quantities; and
  - (c) the amount of levy, charge or liability under subsection 7(1) or (3) of the Collection Act paid by the person for each of those quantities; and
  - (d) the personal details (except any post office box or post office bag) of everyone:
    - (i) to whom the person sold melons, except by retail sale; or
    - (ii) from whom the person bought melons; and
  - (e) the name and business or residential address (not the address of a post office box or post office bag) of everyone to whom the person exported melons; and
  - (f) the total quantity, in kilograms, of melons:
    - (i) sold as described in subparagraph (d)(i); and
    - (ii) bought as described in subparagraph (d)(ii); and
    - (iii) exported as described in paragraph (e).
- (2) A person commits an offence of strict liability if:
  - (a) the person is required by subclause (1) to keep records; and
  - (b) the person fails to comply with the requirement.

Penalty: 10 penalty units.

### **31.18 Review of decisions**

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

- (a) a decision under paragraph 31.14(1)(a) to refuse to grant an exemption;
- (b) a decision under paragraph 31.15(1)(a) to refuse to continue an exemption.