



Statutory Rules 1989 No. 44¹

Horticultural Levy (Apple and Pear) Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Horticultural Levy Act 1987* and the *Horticultural Levy Collection Act 1987*.

Dated 13 March 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

JOHN KERIN
Minister of State for Primary Industries
and Energy

Principal Regulations

1. In these Regulations, "Principal Regulations" means the Horticultural Levy (Apple and Pear) Regulations.

Monthly returns

2. Subregulation 8 (2) of the Principal Regulations is amended by omitting "A person" and substituting "Subject to subregulation 8A (8), a person".

3. After regulation 8 of the Principal Regulations the following regulation is inserted:

Exemption from monthly returns

"8A. (1) A person mentioned in paragraph 8 (2) (a) or (b) who has reason to believe that, in a calendar year, the amount of his or her liability under subsection 7 (1) of the Collection Act will be less than the prescribed

amount, may apply for exemption from the requirement to lodge monthly returns during that year.

“(2) An application shall:

- (a) be lodged with the Secretary at the office of the Department in Canberra; and
- (b) set out the following particulars:
 - (i) the full name and business, or residential, address of the applicant;
 - (ii) if the address referred to in subparagraph (i) is not a satisfactory address for service of documents on that person—such an address, that may be the address of a post office box or bag;
 - (iii) a statement that the person is a first purchaser (other than a prescribed first purchaser) or a selling agent who will or may incur, in the calendar year in respect of which the application is made, a liability under subsection 7 (1) of the Collection Act;
 - (iv) a statement that, in the belief of the person, the amount of that liability will be less than the prescribed amount; and
 - (v) a declaration, signed by the person or an authorised agent of the person, that the particulars set out in the application are correct.

“(3) In considering an application, the Secretary shall have regard to:

- (a) the amount of any liability of the applicant under subsection 7 (1) of the Collection Act in the immediately preceding calendar year; and
- (b) any information that is available to the Secretary about the amount of the liability that the applicant will be likely to incur in the calendar year in which the application is made.

“(4) Within 14 days of the lodgement of the application, the Secretary shall:

- (a) make a decision to grant or refuse the application; and
- (b) send notice of the decision to the applicant, addressed to the last-known address of the applicant.

“(5) Where an exemption is in force and the person to whom the exemption relates lodges a return in respect of the calendar year to which the exemption relates, the Secretary shall consider whether to continue the exemption in respect of the next succeeding calendar year.

“(6) In considering whether to continue an exemption in respect of the year last mentioned in subregulation (5), the Secretary shall have regard to:

- (a) the amount of the liability of the person to whom the exemption relates under subsection 7 (1) of the Collection Act in the immediately preceding calendar year; and

- (b) any information that is available to the Secretary about the amount of the liability that the person will be likely to incur in the calendar year last mentioned in subregulation (5).

“(7) Within 14 days of lodgement of a return mentioned in subregulation (5), the Secretary shall:

- (a) make a decision to continue, or to refuse to continue, the exemption; and
- (b) send notice in writing of the decision to the person to whom the exemption relates, addressed to the last-known address of the person.

“(8) A person is exempt during a calendar year from lodging monthly returns under subregulation 8 (2) if the person has, during that year:

- (a) lodged an application; or
- (b) lodged an annual return in respect of the immediately preceding calendar year, being a year to which an exemption in respect of the person relates;

and the person has not received notice of a refusal to grant, or of a refusal to continue, an exemption in respect of the first-mentioned year.

“(9) A person who receives notice of a refusal to grant, or of a refusal to continue, an exemption in respect of a calendar year shall lodge a monthly return in accordance with subregulation 8 (2) in respect of each month of that year for which the person would, apart from subregulation (8), have been required to lodge a return:

- (a) in respect of each of those months that was concluded before the person received the notice—within 28 days of receiving the notice; and
- (b) in respect of each of those months that was not concluded before the person received the notice—on or before the twenty-eighth day of the next succeeding month.

“(10) In this regulation, “prescribed amount” means \$1,000 or such other amount as the Minister orders for the purposes of this regulation.”.

Annual returns

4. Subregulation 9 (2) of the Principal Regulations is amended:

- (a) by omitting paragraphs (a) and (b) and substituting the following paragraphs:

“(a) a person who is a prescribed first purchaser has, after the commencement of these Regulations, purchased apples or pears in quantities that, in total, exceed 500 boxes; or

“(b) a person receives notice of the grant of an exemption, or of a continuation of an exemption, from the requirement to lodge monthly returns, and the person:

- (i) is a first purchaser (other than a prescribed first purchaser) who has, in that year, purchased apples or pears from a producer of apples or pears; or

- (ii) is a selling agent who has, in that year, sold apples or pears on behalf of a producer of apples or pears;";
- (b) by adding at the end of paragraph (g) "(other than an amount of levy included in a monthly return that has been lodged with the Secretary)".

5. The Principal Regulations are amended by adding at the end the following regulations:

Review of decisions

"11. (1) Applications may be made to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) to refuse to grant an exemption under paragraph 8A (4) (a); or
- (b) to refuse to continue an exemption under paragraph 8A (7) (a).

"(2) Where the Secretary makes a decision mentioned in subregulation (1), the notice of the decision:

- (a) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) shall include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

"(3) A failure to comply with subregulation (2) in relation to a decision does not affect the validity of the decision.

Orders

"12. Subject to section 22 of the Collection Act, the Minister may make orders, not inconsistent with that Act or these Regulations, specifying an amount, not exceeding \$5,000, for the purposes of regulation 8A."

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 17 March 1989.
2. Statutory Rules 1988 No. 189 as amended by 1989 No. 22.