

## BERRYFRUIT LEVY BILL

### EXPLANATORY NOTE

THE purpose of this Bill is to provide for the payment to the New Zealand Berryfruit Growers Federation (Incorporated) of levies by berryfruit growers in respect of their gardens in order to provide funds for the benefit generally of berryfruit growers.

*Clause 1* relates to the Short Title.

*Clause 2* defines the terms used in the Bill. "Berryfruit" means those kinds of fruit listed in the Schedule to the Bill. The list (which may be amended by Order in Council) comprises black currants, red currants, white currants, blueberries, boysenberries, gooseberries, cape gooseberries, loganberries, raspberries, and strawberries. "Garden" is defined as any area of land used wholly or principally for the growing of any berryfruit which is one-sixteenth of an acre or more in area, and "grower" is defined as the owner or occupier of a garden who grows berryfruit for the purposes of sale.

*Clause 3* excludes certain raspberry growers in the South Island from the operation of the Bill.

*Clause 4* empowers the Minister of Agriculture, by notice in the *Gazette*, to prescribe the rates of annual levy payable by berryfruit growers. The levy is to be based on the area of a grower's garden, but is not to exceed \$100 in respect of any one garden. The Minister is to prescribe the rate of levy having regard to the recommendations of the Federation.

*Clause 5* requires every berryfruit grower to whom the Act applies to pay the prescribed annual levy to the New Zealand Berryfruit Growers Federation (Incorporated) for the purposes set out in *clause 6* of the Bill. *Clause 5* also provides for the payment of the levy and requires every grower to file with the Federation a return declaring the area of his garden as at 1 December 1967 or 1 October in any subsequent year. If the grower does not lodge a return with the Federation as required by *clause 5* or lodges a return which the Federation believes on reasonable grounds is incorrect, the Federation may proceed to make an assessment. Within fourteen days of his being given notice of the assessment the grower is to either pay the amount assessed or lodge with the Federation an objection under *clause 8* of the Bill.

*Clause 6* prescribes the purposes for which annual levies may be spent by the Federation. Those purposes generally are for the furtherance of the interests of berryfruit growing and the berryfruit-growing industry.

*Clause 7* empowers the Minister in certain circumstances to prescribe by notice in the *Gazette* a special levy to be paid by berryfruit growers. The clause also provides for the assessment and payment of the levy. Any grower levied under this clause will have the right to lodge with the Federation an objection under *clause 8* of the Bill if he considers he has been incorrectly assessed.

*Clause 8* enables any grower to object to the Federation's assessment of the annual levy or any special levy imposed in respect of his garden, and require the Federation to reassess the levy. If the grower is dissatisfied with the Federation's reassessment on the ground that he considers that the area of his garden has been incorrectly estimated, he may require the Federation to refer the question to the Director-General of Agriculture. The Director-General will then appoint an officer of the Department to determine independently the area of the garden. This determination is to be final and binding on both the Federation and the grower.

*Clause 9* provides that any levy payable under the Act may be recovered by the Federation as a debt.

*Clause 10* relates to offences by growers in respect of failing to file a return, filing a false return, and failing to pay an assessed levy.

*Clause 11* relates to the constitution of the Federation which is to comprise the several berryfruit growers' associations established in accordance with the provisions of the clause. The Federation is to ensure that there are throughout New Zealand such number of associations of berryfruit growers as will secure the adequate representation within the Federation of all growers.

*Clause 12* provides that any berryfruit grower who pays to the Federation the annual levy assessed in respect of his garden is entitled to become a member, without payment of any further fee, of the berryfruit growers' association established in respect of the district where his garden is situated. The clause also deals with certain other matters regarding membership of associations.

*Clauses 13 and 14* provide for the Federation and associations to comply with certain provisions relating to the keeping of accounts, the appointment of auditors, and the audit of their accounts.

*Clause 15* provides for the Federation, and any association so required by the Minister, to furnish him with a report of its proceedings during its previous financial year together with a copy of its balance sheet and certain related documents. The clause also requires the Federation and any association to send to certain growers a copy of its annual report, an audited balance sheet for its preceding financial year, and a copy of the auditors' report in respect of that balance sheet.

*Clause 16* provides for the Federation and any association to send to the Minister, on being required by him to do so, a copy of its rules.

*Clause 17* relates to the commission of offences by officers of the Federation and by officers of affiliated associations.

*Clause 18* provides for the giving of notices.

*Clause 19* provides for the legislation to be administered by the Department of Agriculture, and accordingly amends the Department of Agriculture Act 1953.

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*Hon. Mr Talboys*

## BERRYFRUIT LEVY

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### ANALYSIS

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### A BILL INTITULED

**An Act to authorise the levying of berryfruit growers to provide money for the promotion, development, and improvement of the berryfruit-growing industry**

**5 BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Berryfruit Levy Act 1967.

**2. Interpretation—**(1) In this Act, unless the context otherwise requires,—

“Association” means any association (by whatever name it may be called) for the time being affiliated to the Federation and constituted to safeguard and promote the interests of those growers whose gardens are situated in the area in respect of which the association is established and of such other persons as may be admitted to membership of the association under its rules: 5 10

“Berryfruit”, or “fruit”, means the kinds of fruit for the time being specified in the Schedule to this Act:

“Department” means the Department of Agriculture constituted under the Department of Agriculture Act 1953: 15

“Director-General” means the Director-General of Agriculture:

“Federation” means the New Zealand Berryfruit Growers’ Federation (Incorporated), a society incorporated under the Incorporated Societies Act 1908; and, where appropriate, includes the executive committee (by whatever name it may be called) of the Federation: 20

“Garden” means any area or areas of land, not being in the aggregate less than one-sixteenth of an acre, which is used wholly or principally for the purposes of growing berryfruit: 25

“Grower” means any person who owns or occupies a garden, and grows berryfruit there for the purposes of sale: 30

“Minister” means the Minister of Agriculture:

“Prescribed rate”, in relation to any annual levy, means the rate of annual levy for the time being prescribed by the Minister by notice in the *Gazette*: 35

“Relevant date”, in relation to the year nineteen hundred and sixty-seven, means the first day of December in that year, and in relation to any subsequent year, means the first day of October in that subsequent year: 40

“Sale”, in relation to any berryfruit, includes selling anything produced from the fruit, whether by manufacturing, processing, or otherwise; and “sells” has a corresponding meaning.

(2) The Governor-General may from time to time, by Order in Council, add to or omit from the Schedule to this Act the name of any kind of berryfruit, and every such Order in Council shall take effect according to its  
5 tenor.

**3. Act not to apply to certain growers**—Notwithstanding anything to the contrary in this Act, if, in the period commencing with the first day of December, nineteen hundred and sixty-seven, and ending with the thirtieth day of September, nineteen hundred and sixty-eight, or in any period  
10 of twelve months commencing with the first day of October in the year nineteen hundred and sixty-eight or any subsequent year, any person is required to pay to any marketing committee established under any regulations made under the  
15 Agriculture (Emergency Powers) Act 1934 and the Marketing Act 1936 for the purpose of regulating the marketing of raspberries in respect of any garden that is—

- (a) Owned or occupied by him; and
  - (b) Situated in the South Island; and
  - 20 (c) Used in the production of raspberries for sale—
- any portion of the proceeds from the sale of those raspberries, he shall not for or during that period be required to pay any annual or special levy or to comply with any other requirement of this Act in respect of any part of that garden used  
25 as aforesaid.

**4. Minister may prescribe rates of annual levy**—(1) Subject to the provisions of this Act, the Minister may from time to time, after having regard to the recommendations of the Federation on the matter, prescribe by notice in the  
30 *Gazette* the rates of annual levy to be paid by berryfruit growers in respect of their gardens to the Federation for the purposes of this Act. The rates so prescribed shall be based on the areas of gardens.

(2) No rate of more than one hundred dollars shall be  
35 payable in respect of any one garden.

(3) The rates of levy may apply to all berryfruit growing districts or to all classes of berryfruit or may vary in respect of different districts or different classes of fruit.

(4) The rates of levy shall be notified in the *Gazette* at  
40 least fourteen days before they are to come into force.

(5) The Minister may at any time vary or revoke any notice made under subsection (1) of this section.

**5. Annual levies payable by certain growers—**(1) An annual levy, the rate of which is for the time being prescribed by the Minister under section 4 of this Act, shall be payable to the Federation by every grower who, on the relevant date in any year, is carrying on the business of growing berryfruit for the purposes of sale. 5

(2) Before the relevant date in any year, the Federation shall supply to every grower who in the opinion of the Federation may be liable to pay an annual levy a form of return which shall include a list of the prescribed rates of annual levy. 10

(3) Within twenty-eight days after the relevant date in any year, or within such extended period as the Federation may allow, every grower shall lodge with the Federation a return (which may be in the form supplied to him under subsection (2) of this section or in such other form as may be acceptable to the Federation) declaring the area of his garden on that date. The return shall be accompanied by the amount of the appropriate annual levy. 15 20

(4) If the grower does not lodge with the Federation a return as required by subsection (3) of this section or if the Federation believes on reasonable grounds that the area declared in the return is incorrect, the Federation may estimate the area of the grower's garden and assess the levy payable in respect of it in accordance with the prescribed rates. 25

(5) On making an assessment under subsection (4) of this section, the Federation shall as soon as practicable notify the grower of its assessment and of the amount that he is required to pay to it by way of levy or additional levy, as the case may be. 30

(6) Within fourteen days of his being given notice under subsection (5) of this section, or within such extended period as the Federation may allow, the grower shall pay to the Federation the amount specified in the notice, unless he objects to the assessment, in which case he shall give notice of the objection to the Federation in accordance with section 8 of this Act. 35 40

(7) For the purposes of determining whether any person is liable to pay an annual levy, a person shall be deemed to be a grower who on the relevant date in any year is carrying on the business of growing berryfruit for the purposes of sale

5 if—

(a) He owns or occupies a garden and is growing berryfruit there on that relevant date; and

(b) He sells any of the berryfruit at any time during the period commencing with that relevant date and ending on the relevant date in the next ensuing year.

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**6. Expenditure of annual levies—**(1) The money received by the Federation from annual levies imposed under this Act shall be spent by the Federation for the promotion, development, and organisation of the berryfruit-growing industry.

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(2) Subject to subsection (1) of this section, the money collected from annual levies may from time to time be spent by the Federation for all or any of the following purposes:

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(a) The investigation and testing of equipment, materials, plant, processes, and procedures likely to contribute to the development of the berryfruit-growing industry, and the purchase of any such equipment, materials, and plant for testing purposes:

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(b) The investigation, testing, and development of internal and overseas markets for berryfruit, whether fresh preserved or processed:

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(c) Notwithstanding paragraph (a) of section 5 of the Incorporated Societies Act 1908, the allocation of grants to any association for its purposes (being purposes connected with the promotion, development or organisation of the berryfruit-growing industry) of such sums as the Federation may from time to time decide:

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(d) The allocation of grants to any person, institution, or body conducting research into or in connection with the growing, processing, distributing, preserving, storing, or marketing of any berryfruit:

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(e) The publication from time to time of information relating to the activities of the Federation or generally relating to matters of interest to berryfruit growers and for the purpose of encouraging the development of the berryfruit-growing industry in New Zealand:

- (f) The provision of general advisory services to associations and their members in respect of the growing, processing, distributing, preserving, storing, and marketing of berryfruit:
- (g) The giving of assistance and advice to associations and their members on technical, administrative, and financial matters: 5
- (h) The acquisition of land and premises (whether by purchase, lease, or otherwise) for the purposes of the Federation: 10
- (i) The erection of premises for the purposes of the Federation, and the maintenance, alteration, or decoration of the Federation's premises:
- (j) The acquisition of patents or licences, relating to the berryfruit-growing industry: 15
- (k) The holding of lectures, seminars, exhibitions, or public meetings for the purpose of disseminating information relating to the growing, processing, distributing, preserving, storing, and marketing of berryfruit: 20
- (l) The payment of honoraria to officers of the Federation, the payment of salaries and wages to its servants, and the payment of travelling expenses to any of them:
- (m) The payment of expenses incurred in connection with— 25
  - (i) The day to day administration of the Federation:
  - (ii) Meetings of persons conducting the affairs of the Federation, or meetings of any committee appointed by the Federation: 30
  - (iii) Any general conference of berryfruit growers or associations.
- (n) Such other purposes in furtherance of the interests of berryfruit growers as the Federation thinks fit and the Minister approves. 35

**7. Special levy—**(1) In addition to the annual levy payable under section 5 of this Act, the Minister may, by notice in the *Gazette*, prescribe a special levy of such amounts or rates, for such purposes, and on such terms as may have been recommended to him by the Federation pursuant to a resolution passed in accordance with the rules of the Federation at an annual conference or meeting or at a special conference or meeting called for the purpose. 40



(2) No such resolution shall be submitted to the Minister unless it was carried at the conference or meeting by at least three-quarters of the votes cast.

5 (3) Every resolution recommending that the Minister prescribe a special levy shall specify—

(a) The amounts or rates of the proposed special levy:

(b) The growers or classes of growers or gardens or classes of gardens proposed to be levied:

10 (c) The purpose for which the money yielded from the levy may be spent:

(d) The method by which the levy is to be assessed and collected.

(4) The money received by the Federation pursuant to this section shall be spent only for the purpose for which the levy was imposed.

15 (5) The Federation shall, where necessary, assess in accordance with the amounts or rates of special levy prescribed by the Minister under this section the levy payable by each grower, and shall then notify him of the assessment.

20 (6) Within twenty-eight days of his being given notice of the assessment, or within such extended period as the Federation may allow, the grower shall pay the levy assessed to the Federation, unless he objects to the assessment, in which case he shall notify the Federation of his objection  
25 in accordance with section 8 of this Act.

**8. Objections to assessments—**(1) Where pursuant to section 5 or section 7 of this Act a grower has given notice of objection to any assessment, the Federation shall, as soon as practicable after receipt of the notice, inquire  
30 into the objection, and may either reassess the levy payable by the grower in respect of his garden or rescind the assessment to which the grower has objected:

35 Provided that no inquiry into an objection under this subsection shall be made unless reasonable notice of the date and time when and the place where it is to be considered has been given to the grower and the opportunity has been given for him to be heard at the appointed time and place (either personally or by counsel or by means of written submissions).

40 (2) The Federation shall, as soon as practicable (whether the grower was present at the inquiry or not) notify him of its decision and the reasons for it. Every such notice shall specify the amount to be paid by the grower as a result of any reassessment.

(3) Within fourteen days of his being notified by the Federation of its reassessment, or within such extended period as the Federation may allow, the grower shall pay the amount specified in the notice:

Provided that, in the case of an annual levy or a special 5  
levy based on garden areas, if the grower considers that the Federation has incorrectly estimated the area of his garden, he may, within the said fourteen days, notify the Federation that he requires the question of the determination of the area of his garden to be referred to the Director-General under 10  
subsection (4) of this section.

(4) On receipt of the last-mentioned notice, the Federation shall as soon as practicable refer it to the Director-General, who shall appoint a suitable officer of the Department to determine independently the area of garden in respect 15  
of which the levy is to be paid by the grower. When the officer so appointed has completed his determination, he shall notify the Federation and the grower of his findings; and those findings shall be final and binding on both the Federation 20  
and the grower.

(5) The grower shall at all reasonable times permit the officer to enter his garden for the purpose of enabling him to determine the area of the garden. If the grower refuses to give the permission, the Federation's reassessment made under subsection (1) of this section shall be deemed to be 25  
confirmed. Every officer appointed for the purposes of this section shall, if so required by the grower, produce a warrant duly authenticated by the Director-General showing the officer's authority to exercise the powers and duties conferred on him by this section. 30

(6) Within fourteen days of his being given notice of the officer's determination, or within such extended time as the Federation may allow, the grower shall pay the amount of the appropriate levy for the area of his garden (as finally determined under this section) or, as the case may be, any 35  
balance of the appropriate levy that may be outstanding and owing to the Federation.

**9. Money recoverable as a debt**—All money payable by way of levy under this Act shall be recoverable in any Court of competent jurisdiction as a debt due to the Federation. 40

**10. Offences in respect of returns**—Every grower commits an offence, and is liable on summary conviction to a fine not exceeding two hundred dollars, who—

- 5 (a) Fails, without reasonable excuse, to lodge with the Federation any return required by this Act; or
- (b) Makes any return which to his knowledge is false in any material particular; or
- 10 (c) Fraudulently avoids or attempts to avoid paying any annual or special levy payable by him pursuant to this Act.

**11. Federation to comprise affiliated associations, etc.**—

The Federation shall at all times after its first general conference or meeting after the passing of this Act ensure that there is in existence throughout New Zealand such  
15 number of associations of berryfruit growers as will secure the adequate representation within the Federation of all growers. Every such association shall, except where it is not possible to comply with the provisions of the Incorporated Societies Act 1908, be incorporated as a branch of the  
20 Federation under section 2 of the Incorporated Societies Amendment Act 1920 or as an incorporated society under the Incorporated Societies Act 1908. The Federation shall, after the constitution of the associations as aforesaid, comprise those associations.

25 **12. Membership of associations**—(1) Notwithstanding anything to the contrary in the rules of the Federation or of any association, every grower who pays to the Federation the prescribed amount of annual levy in respect of the relevant date in any year shall, for the period commencing with that  
30 relevant date and ending with the relevant date in the next ensuing year, be entitled, by virtue of that payment and without payment of any membership or other fee, to be a member of any association for the time being established in respect of the district in which the garden is situated.

35 (2) Nothing in this section shall preclude any such association from admitting to membership any person other than a grower entitled to be a member of the association by virtue of subsection (1) of this section.

40 (3) Every person who is a member of any association by virtue of this section shall be entitled to exercise a vote at any meeting of the association.

**13. Annual accounts, etc.**—(1) The Federation and every association shall at all times each keep full and correct records of all its financial transactions, assets, liabilities, and funds.

(2) The Federation and every association shall each appoint some fit person to act as its secretary and to keep all records and books of account. 5

(3) At the end of each financial year ending with the thirty-first day of March, the Federation and every association shall each prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at that date. 10

**14. Auditors and auditing of accounts**—(1) The Federation and every association shall each, at its annual conference or annual general meeting or at any special conference or general meeting called for the purpose, appoint a member or members of the New Zealand Society of Accountants to hold office until its next annual conference or annual general meeting as its auditor or auditors for the purpose of auditing its accounts: 15

Provided that no person who is an officer or servant of the Federation or a member, officer, or servant of any association shall be capable of being appointed as an auditor under this subsection. 20

(2) All the provisions of section 166 of the Companies Act 1955 (which section relates to auditors' reports and auditors' right of access to books of account and to attend and be heard at general meetings) shall so far as they are applicable and with the necessary modifications apply to the Federation and to every association as if it were a company registered under the Companies Act 1955. For the purposes of this subsection, the term "profit and loss account" in the said section 166 shall be construed as meaning income and expenditure account. 25 30

(3) Any unqualified person who acts as auditor of the Federation or any association commits an offence and is liable on summary conviction to a fine not exceeding two hundred dollars. 35

**15. Copy of balance sheet to be sent to Minister and members**—(1) The Federation, and any association required to do so by the Minister, shall, not later than three months after the expiration of its financial year, furnish to the Minister a report on its proceedings for that financial year. There shall be affixed to the report copies of the income and 40

expenditure account and balance sheet of the Federation or association, as the case may be, together with a copy of the report of the auditor or auditors thereon.

5 (2) Where in respect of any financial year of the Federation a grower has paid to it a levy pursuant to this Act, the Federation shall send to him a copy of the report sent to the Minister under subsection (1) of this section together with a copy of its income and expenditure account and balance sheet for that year and a copy of the report of the auditor or  
10 auditors in respect thereof.

(3) Every association shall in each year supply to each of its members a copy of its income and expenditure account and balance sheet in respect of its preceding financial year, together with a copy of the report of the auditor or auditors  
15 thereon.

(4) Nothing in this section shall derogate from the provisions of the Incorporated Societies Act 1908.

**16. Copy of rules, etc., to be submitted to Minister**—If so required by the Minister, the Federation and any association  
20 shall, within such reasonable time as the Minister may specify, send to him a copy of its rules together with any amendments thereto.

**17. Offences by officers of the Federation and associations—**

(1) Every officer of the Federation and of any association com-  
25 mits an offence, and is liable on summary conviction to a fine not exceeding two hundred dollars, who—

(a) Fails, without reasonable excuse, to take all reasonable steps to secure compliance by the Federation or association of which he is an officer with any  
30 requirement imposed on it by this Act; or

(b) Wilfully does any act in contravention of the provisions of this Act, or, in any case where the Federation contravenes any such provision, connives at the  
contravention.

35 (2) For the purposes of this section the term “officer” means any member of the executive committee or management committee (by whatever name it may be called) of the Federation or association and any paid secretary thereof.

**18. Giving of notice—**(1) Any notice required or authorised to be given under this Act shall be in writing and may be sent by registered letter or telegram addressed to the person to whom it is to be given at his usual place of business or, in the case of the Federation or any association, to the Federation or association at its registered office, or may be given personally to him or it. 5

(2) Where any notice is sent by registered post as aforesaid, the notice shall be deemed to have been given at the time when the letter would have been delivered in the ordinary course of post. 10

**19. Act to be administered by Department of Agriculture—**The Schedule to the Department of Agriculture Act 1953 is hereby amended by inserting, in the appropriate alphabetical order, the words “The Berryfruit Levy Act 1967”. 15

Section 2

SCHEDULE

BERRYFRUIT TO WHICH THIS ACT APPLIES

Black currants, red currants, white currants, blueberries, boysenberries, gooseberries, cape gooseberries, loganberries, raspberries, and strawberries.