

[AS REPORTED FROM THE PRIMARY PRODUCTION COMMITTEE]

House of Representatives, 28 August 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Jim Sutton

COMMODITY LEVIES

ANALYSIS

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A BILL INTITLED

5 **An Act to enable the making of Orders in Council (empowering organisations representing the interests of the commercial producers of primary commodities to impose levies in respect of those commodities) imposing on certain commodities levies payable to bodies**

No. 32—2

Price
incl. GST \$2.20

corporate representing the views and interests of the persons primarily responsible for paying those levies

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Commodity Levies Act 1990. 5

(2) This Act shall come into force on the 28th day after the day on which it receives the Royal assent.

2. Interpretation—

Struck Out

(1) In this Act, unless the context otherwise requires,— 10

“Aquatic commodity” means a commodity that is, or is produced from, animals or plants that, for at least some part of their lives, must live in water:

“Auditor” means a person for the time being appointed under **section 15 (1)** of this Act: 15

“Commodity” includes 2 or more commodities, and any one or more of 2 or more commodities:

“Forestry commodity” means a commodity that is, or is derived from, trees or wood: 20

“Gathered commodity” means a commodity that is, or is produced from, an animal or vegetable product (whether or not fossilised) gathered or harvested from, or found in, farms, forests, or the wild:

“Industry organisation” means a body corporate that represents, purports to represent, or is intended to represent, the interests of commercial producers in New Zealand of a commodity or commodities: 25

“Levy order” means an order under **section 4** of this Act empowering an industry organisation to impose, for its own benefit, a levy in respect of a primary commodity: 30

“Minister” means any Minister of the Crown:

“Poultry commodity” means a commodity that is, or is produced from, poultry or eggs: 35

“Primary commodity” means an agricultural, apicultural, aquatic, forestry, gathered, horticultural, mineral, pastoral, or poultry commodity.

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(1) In this Act, unless the context otherwise requires,—

- 5 “Animal” means any member of the animal kingdom; and includes a bacterium and a virus:
- “Agricultural product” means a product of the cultivation of the soil:
- 10 “Auditor” means a person for the time being appointed under subsection (1) or subsection (1A) of section 15 of this Act:
- “Commodity” means any agricultural, farmed, forestry, horticultural, mineral, or wild product:
- 15 “Farmed product” means a product that is, or is part of or produced by, animals farmed, fattened, kept, raised, or used, for the purpose of—
- (a) The production of the product (whether the production of the product is a principal, subsidiary, or incidental purpose); or
- 20 (b) The production of some other farmed product;—
- and includes beeswax, honey, and honeydew:
- “Forestry product” means a product that is, or is part of or produced by, trees:
- 25 “Horticultural product” means a product that is, or is part of or produced by, plants grown or growing—
- (a) In gardens, greenhouses, shadehouses, or orchards; or
- (b) Hydroponically:
- 30 “Industry organisation” means a body corporate to which a levy is payable under a levy order; and, in relation to—
- (a) A levy order; or
- (b) A commodity on which a levy is imposed by a levy order,—
- 35 means the industry organisation to which the levy concerned is payable under the order:
- “Levy order” means an order under section 4 of this Act:
- “Plant” means any member of the animal kingdom; and includes an alga and a fungus:
- 40 “Mineral product” means a product that is, or is refined or extracted from, minerals (whether the minerals concerned are, or are found in or beneath,—

New

(a) Land or water; or	
(b) The bed of the sea, or of any stream, river, or lake):	
“Minister” means a Minister of the Crown:	5
“Wild product” means an animal, fungal, or vegetable product (whether fossilised or not) that is—	
(a) Gathered or harvested; or	
(b) Part of or produced by an animal or plant captured, gathered, harvested, or killed,—	10
in farms, forests, gardens, orchards, waters, or the wild.	
(1A) For the avoidance of doubt, it is hereby declared that a commodity may belong to 2 or more of the following classes of commodity; agricultural product, farmed product, forestry product, horticultural product, mineral product, and wild product.	15
(2) Where an industry organisation acquires or builds up any asset with, out of, or by virtue of spending, money paid to it under a levy order as levy, this Act shall have effect—	20
(a) In relation to any other asset it acquires in exchange or part exchange for that asset, as if that other asset has also been acquired or built up with, out of, or by virtue of spending, money paid as a levy; and	
(b) In relation to any money it acquires in exchange or part exchange for that asset, as if that money has been paid to the organisation under a levy order as levy.	25
<i>New</i>	
(3) Every levy order, and every order under section 13 (2) of this Act, shall be deemed to be a regulation for the purposes of the Regulations Act 1936.	30

3. Act binds the Crown—This Act binds the Crown.

PART I
LEVY ORDERS
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5 **4. Industry organisation may be empowered to impose levy**—Subject to **section 5** of this Act, the Governor-General may from time to time, on the recommendation of a Minister, by Order in Council empower an industry organisation to impose for its own benefit a levy in respect of a primary commodity.

10 *New*

4. Governor-General may impose levy—Subject to **section 5** of this Act, the Governor-General may from time to time, on the recommendation of a Minister, by Order in Council impose on a commodity a levy payable to a body corporate.

15 **5. Restrictions on making of orders**—(1) No Minister shall recommend the making of a levy order, unless the *(industry organisation for whose benefit the levy is to be imposed has)* body corporate to which the levy is to be payable (in subsection (2) of this section referred to as an applicant organisation) has—

20 (a) Asked the Minister to do so; and
(b) Given the Minister a written plan showing how the levy collected in the first full year of collection would be spent.

25 (2) No Minister shall recommend the making of a levy order *(in respect of any commodity for the benefit of any industry organisation)* imposing on any commodity a levy payable to an applicant organisation, unless the Minister is satisfied, on the basis of information and evidence satisfactory to the Minister,—

30 (a) That the organisation has consulted adequately persons likely to be affected by the payment or collection of the levy; and

35 (b) That considerably more than half the persons who would be primarily responsible for paying the levy support its imposition *(in respect of)* on the commodity; and

(c) If the order *(specifies that the levy is to be imposed)* imposes the levy on the basis of production of the commodity,

that persons who in any year produce considerably more than half the commercial production of the commodity in New Zealand support its imposition (*in respect of*) on the commodity; and

New

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(ca) If the order imposes the levy on the basis of the value of the commodity, that persons who in any year produce amounts of the commodity whose value (ascertained by the same means as that to be used to ascertain the values in respect of which the levy is to be paid) is considerably more than half of the value (so ascertained) of the total amount of the commodity commercially produced in New Zealand support its imposition on the commodity; and

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(d) If the order (*specifies that the levy is to be imposed*) imposes the levy on the basis of the area of land devoted to the (*commercial*) production of the commodity, that persons producing the commodity commercially from land that is in total considerably more than half the land used for the commercial production of the commodity in New Zealand support its imposition (*in respect of*) on the commodity; and

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(e) If the order (*specifies that the levy is to be imposed*) imposes the levy on the basis of the number, quantity, or size of a thing or things of a specified kind connected with the (*commercial*) production of the commodity (for example, the number of trees, hives, embryos, or breeding stock, or the total capacity of ships), that persons having control or management of considerably more than half the number or quantity of that thing or those things used for the commercial production of the commodity in New Zealand support its imposition (*in respect of*) on the commodity; and

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(f) That—

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(i) Persons opposing the levy's imposition (*in respect of*) on the commodity; and

(ii) Other organisations (if any) representing or purporting to represent the interests of the persons who are to be primarily responsible for paying the levy, or any of them,—

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have had a reasonable opportunity to put their views to the Minister; and

- 5 (g) That the Minister has had due regard to all views put to the Minister about the proposed imposition of the levy *(in respect of)* on the commodity; and
- (h) That the uses to which the levy will be put will be closely related to the interests of the persons who will be primarily responsible for paying it; and
- 10 (i) That overall, the benefits to the persons who *(produce the commodity commercially in New Zealand)* will be primarily responsible for paying the levy of the spending for the purposes specified in the order of the amount of levy likely to be raised will outweigh the disadvantages to them of the imposition, collection, and payment of the levy *(in respect of)* on the commodity; and
- 15 (j) If the levy is *(to apply in respect of)* imposed on quantities of the commodity imported into New Zealand that—
- 20 (i) The importers will benefit from the spending of the levy; and
- (ii) The organisation will have regard to the importers' views on the spending of the levy; and
- (iii) The imposition of the levy *(in respect of)* on imported commodity will not be contrary to New Zealand's international legal obligations; and
- 25 (k) That the organisation, by virtue of its membership and structure, represents adequately the views and interests of the persons who will be primarily responsible for paying the levy; and

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- (l) That it would be impossible or impracticable to finance the doing of the things for which the levy is to be spent out of voluntary levies; and
- 35 (m) If the doing of the things for which the levy is to be spent were paid for out of voluntary levies, persons who chose not to pay those levies would derive unearned benefits from the doing of those things; and

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- (l) Either—

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| <p>(i) That it would be impossible or impracticable to finance the doing out of voluntary levies of the things for which the levy is to be spent; or</p> <p>(ii) That if the doing of the things for which the levy is to be spent were paid for out of voluntary levies, persons who chose not to pay those levies would derive unearned benefits from the doing of those things; and</p> | 5 |
| <p>(n) <i>(The)</i> That the organisation has or will have in place adequate systems for accounting to persons who will be primarily responsible for paying the levy of its receipt and expenditure (including, in particular, the uses to which it will be put); and</p> | 10 |
| <p>(o) <i>(All)</i> That all other relevant matters known to the Minister have been properly considered.</p> | 15 |
| <p>6. Matters to be specified in orders—(1) Every levy order <i>(in respect of any commodity for the benefit of)</i> <u>imposing on any commodity a levy payable to any industry organisation shall specify—</u></p> | 20 |
| <p>(a) The organisation; and</p> | |
| <p>(b) The commodity; and</p> | |
| <p>(c) The persons primarily responsible for paying the levy; and</p> | |
| <p>(d) The basis on which the amount of the levy is to be calculated or ascertained; and</p> | 25 |
| <p>(e) The persons (if any) to be exempt from paying the levy; and</p> | |
| <p>(f) Whether the levy is to be paid by the persons primarily responsible for paying it, or paid by other persons and recovered by them from the persons primarily responsible; and</p> | 30 |
| <p>(g) If the levy is to be paid by persons not primarily responsible for paying it and recovered by them from the persons primarily responsible,—</p> | |
| <p>(i) The persons who are to pay it; and</p> | 35 |
| <p>(ii) Their duties; and</p> | |
| <p>(iii) The means by which they may recover it; and</p> | |

New

- 5 (ga) The extent (if any) to which any persons, or persons of any class or description, are to refrain from disclosing information (or information of any class or description) obtained, or obtained as a result of actions undertaken,—
- (i) Under the order; or
 - (ii) In relation to the order, under this Act; and
- 10 (h) Subject to **section 10** of this Act, either—
- (i) How the organisation is to spend the levy; or
 - (ii) A means by which the organisation is to consult the persons primarily responsible for paying it as to how the organisation is to spend it; and
- 15 (i) Whether the levy must be spent by the organisation, or may be paid to and spent by branches or subsidiaries of the organisation; and
- (j) The *(year)* periods in respect of which the levy is to be paid; and

New

- 20 (ja) Whether the levy is to be paid at a single rate or 2 or more different rates; and if at different rates, the things (whether—
- (i) Different classes or descriptions of the commodity; or
 - 25 (ii) Different things of a specified kind, connected with the production of the commodity, on the basis of which the levy is imposed)—
- to which the different rates may apply; and
- 30 (k) In respect of *(the commodity (or each of them if more than one), one of the following means of fixing the rate of the levy)* each rate of levy, one of the following:
- (i) A maximum rate of levy, with the organisation empowered to set the actual rate;
 - 35 (ii) A maximum amount by which the organisation may increase the rate of the levy in any *(year)* specified period, with the initial rate of the levy to be fixed by the organisation with the approval of a Minister, and *(annual)* later rates to be fixed by the

organisation either with the approval of a Minister or within the maximum:

(iii) The rate for a *(year)* period, being either a rate fixed by the organisation and not higher than the rate *(for the year before)* last fixed, or a higher rate fixed by a Minister on the recommendation of the organisation; and 5

(l) How the rates of the levy *(on any year)* are to be notified; and

(m) If the levy is to be paid by persons not primarily responsible for paying it and recovered by them from the persons primarily responsible,— 10

(i) Whether or not the persons not primarily responsible are entitled to charge the organisation a fee for paying and recovering it; and 15

(ii) If so, the amount of the fee, or a means by which its amount may be calculated or ascertained; and

(n) How often *(in each year)* the levy is to be paid; and

(o) The due and latest days, or a means for ascertaining the due and latest days, for payment of the levy. 20

(2) Subject to **subsection (3)** of this section, a levy order *(in respect of any commodity for the benefit of)* imposing on any commodity a levy payable to any industry organisation may prescribe all or any of the following matters: 25

(a) General purposes for which the levy is to be spent:

(b) Maximum and minimum amounts of levy payable:

(c) If the levy is payable on a basis that relates to quantities of the commodity,—

(i) Subject to **subsection (4)** of this section, whether or not the levy applies to quantities imported into New Zealand; and 30

(ii) If so, subject to **subsection (5)** of this section, whether the levy is payable in respect of the imported commodity at a rate that is the same as the rate applying to the commodity produced in New Zealand, or at a lower rate: 35

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(ca) The making of returns (whether by producers of a commodity or other persons) to the organisation or some other person or body, for the purpose of	40
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enabling or assisting the determination of amounts of levy payable:

- 5 (cb) Circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of any amount of levy:

(d) The payment of additional or increased levy when amounts of levy otherwise payable have been paid late or not paid at all.

- 10 (3) No Minister shall recommend the making of a levy order (*in respect of*) imposing a levy on any commodity unless satisfied that the spending of the levy in accordance with the order would not be, and would not be able to be, contrary to New Zealand's international legal obligations.

- 15 (4) No Minister shall recommend the making (*in respect of any commodity of a levy order*) of a levy order imposing a levy on a commodity and prescribing that the levy applies to quantities of the commodity imported into New Zealand, unless the Minister is satisfied, on the basis of information and evidence
- 20 satisfactory to the Minister, that unless the levy applies to imported commodity, exporters or importers of imported product, or other persons acquiring or dealing with imported product, will derive unearned benefits from the expenditure of the levy.

- 25 (5) No Minister shall recommend the making (*in respect of any commodity of a levy order*) of a levy order imposing a levy on a commodity and prescribing that the levy applies to quantities of the commodity imported into New Zealand, unless the Minister is satisfied, on the basis of information and evidence
- 30 satisfactory to the Minister, that the rate of levy on imported product provided for in the order cannot be greater than the rate necessary to ensure that exporters or importers of imported product, or other persons acquiring or dealing with imported product, will not derive unearned benefits from the
- 35 expenditure of the levy.

- 40 **7. Effect of orders**—Where a levy order (*in respect of any commodity has been made for the benefit of*) has been made imposing on any commodity a levy payable to any industry organisation, the following provisions shall, in accordance with the order, apply:

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(a) The organisation may impose the levy in respect of the commodity:

(b) Every person responsible for paying the levy to the organisation shall do so: 5

(c) The organisation may recover the levy from any person responsible for paying it to the organisation—
 (i) By deducting it from any amount the organisation owes the person; or
 (ii) As a debt due in any Court of competent jurisdiction: 10

New

(ca) Where a person responsible for paying the levy to the organisation—

(i) Is not primarily responsible for paying any amount of the levy; but 15

(ii) Is required to deduct that amount from any amount the person owes the person primarily responsible, and pay it to the organisation,— notwithstanding any rule of law to the contrary, the amount deducted or (if the larger amount from which it is required to be deducted is still in the person's possession) required to be deducted shall, until it has been paid to the organisation, be deemed to be money held in trust for the organisation: 20 25

(cb) Where a person responsible for paying the levy to the organisation—

(i) Is not primarily responsible for paying any amount of the levy; and

(ii) Is required to deduct that amount from any amount the person owes the person primarily responsible, and pay it to the organisation; and 30

(iii) Fails to make the full deduction required before paying the amount owed to the person who is owed it— 35

the organisation may recover from the person to whom or which the other amount was paid the amount of the deduction that should have been

New

made, as if the person is a person responsible for paying it to the organisation:

5 (d) Where a person who has paid the levy to the organisation is not the person primarily responsible for paying it, the former may recover the amount paid from the latter—

(i) By deducting it from any amount the former owes the latter; or

10 (ii) As a debt due in any Court of competent jurisdiction.

15 **8. Conscientious objectors**—(A) Every levy order (*may*) shall make special provision for the payment of amounts of levy by persons who object on conscientious or religious grounds to paying it in the manner otherwise provided for in the order.

9. Financial provisions—Where a levy order has (*been made for the benefit of*) imposed a levy payable to an industry organisation,—

20 (a) The organisation shall open 1 or more bank accounts for the purpose of the levy, and shall use that account or those accounts for the following purposes only:

(i) The deposit of amounts of levy paid or recovered:

(ii) Making payments out of levy:

25 (b) Only (*trustees of*) people for the time being expressly authorised by the organisation shall be capable of operating the account or accounts:

30 (c) No money shall be paid out of the account or accounts except for a purpose or purposes authorised by the order or this Act.

10. Use of levy—(1A) No industry organisation shall spend any amount of levy for any commercial or trading activity.

35 (1) Subject to **section 6 (3)** of this Act, in specifying how a levy is to be spent, or a means by which an industry organisation is to ascertain how it may be spent, a levy order—

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(a) Shall specify that no amount of the levy shall be spent for any commercial or trading activity by the organisation:

(b) May specify any other purpose or purposes for which no amount of levy shall be spent: 5

(c) Subject to paragraphs (a) and (b) of this subsection, may specify all or any of the following purposes:

(i) Research relating to the *(primary)* commodity or commodities concerned, or in relation to any matter connected with it (including market research): 10

(ii) The development of products derived from the *(primary)* commodity or commodities concerned:

(iii) The development of markets for the commodity or commodities, or products derived from the commodity or commodities: 15

(iv) The promotion (including generic advertising) of the industry concerned, the commodity or commodities, or products derived from the commodity or commodities: 20

New

(ivA) The protection or improvement of the health of animals or plants that are, or parts of which are, or from or by which is or are produced or gathered, the commodity or commodities concerned: 25

(ivB) The development or implementation of plans or programmes of quality assurance (relating or relevant to the commodity or commodities concerned):

(ivC) Education, information, promotion, or training, (relating or relevant to the commodity or commodities concerned): 30

(v) Day to day administration of the organisation's activities (not being the administration, direct or indirect, of any commercial or trading activity undertaken by the organisation or on its behalf). 35

(vi) Any other purpose the Minister thinks fit.

(2) Subsection (1) (c) of this section does not limit the generality of section 6 (2) (a) of this Act.

5 (3) An industry organisation may, with the written approval of a Minister, and subject to the conditions (if any) subject to which the approval was given, spend any amount of a levy it has imposed pursuant to a levy order for a purpose prohibited by **subsection (1A)** of this section or by the order.

(4) The Minister shall not give an approval under **subsection (3)** of this section unless satisfied that—

10 (a) The spending of money for the purpose concerned will benefit *(the industry concerned as a whole)* most of the persons primarily responsible for the payment of the levy concerned; and

(b) If some members of the industry spend money for the purpose, other members who have not done so will derive unearned benefits from the expenditure; and

15 (c) Persons who, together, are primarily responsible for paying considerably more than half the amount of the levy concerned each year support the spending of money for the purpose.

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20 (5) Nothing in **subsection (1)** of this section prevents the use of any part of a levy for buying quantities of the commodity concerned, or of any product made from it, if it is bought only for one or more of the following purposes:

- 25 (a) Promotion:
 (b) Research:
 (c) Product development:
 (d) Market development.

New

30 (5) Nothing in **subsection (1A)** of this section prevents an industry organisation from—

35 (a) Using any part of a levy for buying limited quantities of the commodity or commodities concerned, or of any product made from it or them, if it is bought for one or more of the following purposes: promotion, research, education, product development, and market development; or

(b) Reselling (with or without modification or processing) all or any part of any limited quantity of the commodity

New

- or commodities bought for one or more of those purposes.
- (6) Nothing in subsection (1A) of this section prevents an industry organisation from— 5
- (a) Using any part of a levy to undertake or pay for the undertaking of any promotion, research, product development, or market development, undertaken with the intention of achieving commercial or financial benefits; or 10
- (b) Exploiting commercially (otherwise than by the use of any part of a levy) the results of any promotion, research, or development, for whose undertaking any part of a levy was (whether with or without the intention of achieving commercial or financial benefits) used or paid; or 15
- (c) Using any part of a levy to undertake or pay for the undertaking of the publication or sale of any educational, informative, or promotional material, (whether or not at a profit); or 20
- (d) Investing any part of a levy, pending its expenditure.

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- 11. Resolution of disputes**—A levy order may provide for the resolution of disputes as to—
- (a) Whether or not any person is liable to pay the levy: 25
- (b) The amount of levy any person is required to pay.
- 12. Orders to be confirmed**—Unless confirmed by an Act of Parliament passed before the close of the last day of the session during which it is laid before the House of Representatives, a levy order shall be deemed to have been 30
revoked at the close of that day.
- 13. Orders to expire after 5 years**—(1) Subject to—
- (a) Section 12 of this Act; and
- (b) Subsection (2) of this section; and
- (c) The Regulations (Disallowance) Act 1989,— 35

Struck Out

unless earlier revoked, a levy order shall expire and be deemed to have been revoked with the close of the 5th anniversary of the day on which it is made.

5 (2) Subject to **subsection (3)** of this section, the Governor-General may, by Order in Council, extend for a specified period (of not more than 5 years) the currency of a levy order that has not yet expired; and in that case,—

10 (a) The order shall not expire and be deemed to have been revoked until that period has expired; and

(b) The order's currency may be further extended under this subsection.

(3) Except for **subsection (1) (b)**, **section 5** of this Act applies to the making of an order under **subsection (2)** of this section.

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PART II

MISCELLANEOUS PROVISIONS

14. Levy order may provide for returns and audit—A levy order may provide for—

20 (a) The making of returns; and

(b) The remuneration of Auditors; and

(c) The keeping of specified classes of accounts or records by industry organisations, persons collecting levies, and persons who are or may be liable to pay levies; and

25 (d) The times at which audits may be conducted under this Act.

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11. Resolution of disputes—Every levy order shall provide for—

30 (a) The appointment of mediators to resolve disputes as to—
(i) Whether or not any person is required to pay the levy concerned;

(ii) The amount of levy any person is required to pay; and

(b) The procedures to be followed by mediators; and

35 (c) Remuneration of mediators; and

(d) The payment of costs in relation to mediation; and

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- (e) A right of appeal to a District Court Judge against decisions of mediators; and
 (f) Any other matters relating to the resolution of such disputes.

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12. Orders to be confirmed—(1) Where a levy order is made on or after the 1st day of January in any year and before the 1st day of July in that year, it shall, unless confirmed by an Act of Parliament passed before the close of the 31st day of December in that year, be deemed to have been revoked with the close of the 30th day of June of the following year.

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(2) Where a levy order is made after the 30th day of June in any year and on or before the 31st day of December in that year, it shall, unless confirmed by an Act of Parliament passed before the close of the 30th day of June in the following year, be deemed to have been revoked with the close of the 31st day of December in that following year.

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13. Levy orders to expire after 6 years—(1) Subject to—

- (a) **Section 12** of this Act; and
 (b) **Subsection (2)** of this section; and
 (c) The Regulations (Disallowance) Act 1989,—

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unless earlier revoked by Order in Council, a levy order shall be deemed to have been revoked with the close of the 6th anniversary of the day before the day on which it is made.

(2) Subject to **subsection (3)** of this section, the Governor-General may, by Order in Council made at least 12 months before the day on which the order concerned would otherwise be deemed under **subsection (1)** of this section to have been revoked, extend for a specified period (of not more than 5 years) the currency of a levy order that is then in force; and in that case (subject to **subsection (3)** of this section), the order shall not be deemed under **subsection (1)** of this section to have been revoked until the extended period has expired.

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(3) Where the currency of a levy order has been extended under **subsection (2)** of this section, it may from time to time be further extended under that subsection.

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(4) **Section 12** and, except for **subsection (1) (b)**, **section 5** of this Act apply to the making of an order under **subsection (2)** of this section.

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PART II

MISCELLANEOUS PROVISIONS

5 **14. Levy orders to provide for records to be kept**—For the purpose of ascertaining whether or not a levy order is being complied with, the order shall provide for—

- 10 (a) The keeping of accounts and records of specified classes or descriptions by industry organisations, persons collecting levies, and persons who are or may be liable to pay the levy concerned, or any of them; and
- 20 (b) Any such records to be retained for a specified period.

Struck Out

15. Appointment and remuneration of Auditors—

15 (1) While a levy order is in force, the Minister who recommended its making shall from time to time appoint Auditors for the purpose of auditing the relevant industry organisation, persons collecting the levy, and persons who are or may be liable to pay it, for the purpose of ascertaining whether they are complying with the duties imposed on them

20 by this Act or the order.

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15. Compliance audits—(1) While a levy order is in force, the Minister who recommended its making may, at the request of the industry organisation, appoint one or more Auditors to

25 conduct an audit of the affairs of all or any of the following:

- (a) Some or all of the persons collecting the levy;
- (b) Some or all of the persons who are or may be liable to pay the levy (whether or not as persons primarily responsible for paying it);

30 (c) Both.

(1A) While a levy order is in force, the Minister who recommended its making may, if a mediator has been appointed to resolve a dispute, appoint an Auditor to conduct an audit of the affairs of all or any of the persons involved in

35 the dispute.

(2) No person is qualified for appointment as an Auditor unless the person is a member of the New Zealand Society of Accountants, or a member fellow or associate of an association of accountants constituted in some part of the Commonwealth outside New Zealand, and for the time being approved for the purpose of the audit of company *(accounts)* financial statements by the Minister of Justice by notice published in the *Gazette*. 5

(3) No officer or employee of any of the following persons or organisations shall be appointed an Auditor:

(a) Any industry organisation: 10

(b) Any person engaged in the collection of levies under *(this Act)* the levy order concerned:

(c) Any person who is or may be liable to pay a levy under this Act:

(4) Every person appointed as an Auditor shall be entitled to remuneration (paid by the industry organisation concerned) as provided in the relevant levy order. 15

Struck Out

16. Audits—Audits of the activities of industry organisations, persons collecting levies, and persons who are or may be liable to pay levies may be conducted by an Auditor at the times prescribed in the levy order, and at any other time an Auditor considers necessary or desirable to ensure— 20

(a) That all persons required to pay the levy do so; or

(b) That all persons paying the levy pay the appropriate amount; or 25

(c) That all persons collecting the levy collect the appropriate amounts, and pay them over in full; or

(d) That the industry organisation concerned puts the levy to appropriate uses; or 30

(e) That adequate accounts and records are kept, and that they are kept accurately.

New

16. Purpose of compliance audits—(1) The purpose of an audit conducted by an Auditor appointed under **section 15 (1)** of this Act is (so far as is practicable) to ascertain in respect of the affairs of the persons whose affairs are to be audited, and 35

New

report to the Minister on, as many of the following matters as are relevant to those affairs:

- 5 (a) The extent to which persons required to pay the levy concerned are doing and have done so:
- (b) The extent to which appropriate amounts of the levy concerned are being and have been paid:
- (c) The extent to which appropriate amounts of the levy concerned are being and have been collected:
- 10 (d) The extent to which appropriate amounts of the levy concerned are being and have been paid over to the organisation by persons collecting it:
- (e) The extent to which accounts and records are being and have been kept:
- 15 (f) The extent to which accounts and records that are being and have been kept are being and have been properly kept.

- (2) The purpose of an audit conducted by an Auditor appointed under **section 15 (1A)** of this Act is (so far as is practicable) to ascertain in respect of the affairs of the parties to the dispute, and report to the mediator concerned, the Minister, and those parties, on matters of fact that are in dispute.

*(17. Power of Auditors to require supply records)***17. Power of Auditors to require production of records—**

- 25 (1) For the purposes of conducting an audit, any Auditor specifically or generally authorised in writing in that behalf by a Minister may from time to time require any person (being an industry organisation, a person collecting levies, a person who is
- 30 or may be liable to pay levies, or any employee or officer of an industry organisation or any such person) to produce for inspection within a reasonable period specified by the Auditor any records or accounts in the possession or under the control of that person (being records or accounts that are required to
- 35 be kept under this Act or by a levy order), and may take copies of or extracts from any such document.

(2) Every authorisation under **subsection (1)** of this section shall contain—

- (a) A reference to this section; and
- 40 (b) The full name of the Auditor; and

(c) A statement of the powers conferred on the Auditor by **subsection (1)** of this section.

(3) Except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no Auditor who exercises powers under this section shall disclose 5
to any other person (other than a Minister or a person authorised in that behalf by a Minister) any information obtained by the Auditor as a result of the exercise of the power.

(4) Notwithstanding **subsection (3)** of this section, the Official Information Act 1982 applies in respect of any information 10
held by a Minister that was obtained pursuant to this section.

New

17A. Assessment of performance of industry organisations—(1) In this section, “performance”, in relation to an industry organisation to which a levy is payable under a levy order, means all or any of the following matters: 15

- (a) The extent to which the organisation may or may not be complying or have complied with the order and (in relation to the order) this Act:
- (b) The extent to which the organisation may or may not be 20
using or have used the amounts of the levy paid to it efficiently and economically:
- (c) The extent to which the uses to which the organisation is putting and has put the amounts of the levy paid to it may or may not benefit (or, as the case may be, have 25
benefited) the persons primarily responsible for paying it.

(2) If—

- (a) Satisfied that there is sufficient concern among the persons primarily responsible for paying a levy under a levy order about the performance of the industry organisation to justify an assessment of that performance; or 30

(b) Not satisfied that the performance of an industry organisation under a levy order is adequate,— 35
the Minister may appoint any person to conduct an assessment of, and report to the Minister on, that performance.

(3) For the purpose of conducting an assessment, a person appointed under **subsection (2)** of this section has, and may exercise and perform, all the powers of an Auditor under **section** 40

New

17 of this Act; and sections 15 (4) and 23 of this Act shall apply accordingly.

5 (4) Within 28 days of receiving a report under subsection (2) of this section, the Minister shall give a copy to the industry organisation concerned.

18. Power of search—(1) A District Court Judge, a Justice, or a Court Registrar (not being a constable) who, on an application in writing made on oath by a member of the Police or designated person, is satisfied that there are reasonable grounds to believe that there is in any place any document, article, primary commodity, or thing that is evidence of the commission of an offence against this Act, may by warrant in the form set out in the Schedule to this Act authorise the member or person to search the place.

(2) A person who applies for a warrant shall, having made reasonable inquiries, disclose—

(a) Details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and

(b) The result of each application.

(3) In this section a designated person means a person (being an Auditor or a person employed in the public service) who is for the time being—

25 (a) Designated by a Minister as a person who may exercise powers of search under this Act; or

(b) A member of a class of person designated by the Minister as persons who may exercise powers of search under this Act.

30 (4) No person or class of person shall be designated as persons who may exercise powers of search under this Act unless the Minister concerned is satisfied that the person or class is suitably qualified and trained to exercise the powers of a designated person.

35 **19. Powers conferred by warrant**—(1) A warrant issued under section 18 of this Act authorises the person named in it—

(a) To enter and search the place specified in the warrant on one occasion within 30 days of the date of issue of the warrant at a time that is reasonable in the circumstances; and

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- (b) To use any assistance that is reasonable in the circumstances; and
 - (c) To use any force for gaining entry or for breaking open any article or thing that is reasonable in the circumstances; and 5
 - (d) To search for and remove documents, articles, or things, that the person believes on reasonable grounds are evidence of any offence against this Act; and
 - (e) To take copies of documents, or extracts from documents, that the person believes on reasonable grounds are evidence of an offence against this Act; and 10
 - (f) Where necessary, to require any person to reproduce, or assist the person executing the warrant to reproduce, in usable form, information recorded or stored in a document. 15
- (2) The warrant shall be executed in accordance with any reasonable conditions specified in the warrant.

20. Warrant to be produced—A person executing a warrant under **section 18** of this Act—

- (a) Shall produce the warrant on initial entry and, if requested, at any subsequent time; and 20
- (b) Shall identify the person to the owner or occupier, or person in charge, of the place concerned if that person is present; and
- (c) Shall produce evidence of identity if asked by the owner, occupier, or person in charge. 25

21. Other duties of person who executes a warrant—

- (1) A person who executes a warrant issued under **section 18** of this Act shall, before completing the search, leave in a prominent place at the place searched— 30
 - (a) In the case of a search carried out at a time when the owner or occupier was not present, a written notice stating—
 - (i) The date and time when the warrant was executed; and 35
 - (ii) The person's name; and
 - (b) In the case of a search where a document or article or thing was removed from the place being searched, a schedule of all documents, articles, and things removed during the search. 40
- (2) If it is not practicable to prepare a schedule before completing the search, or if the owner, occupier, or person in

charge of the place searched consents, the person executing the warrant—

- 5 (a) May, instead of leaving a schedule, leave a notice stating that documents, articles, or things have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating which documents, articles, and things have been removed; and
- 10 (b) Shall, within 7 days of the search,—
- (i) Deliver a schedule to the owner, occupier, or person in charge; or
- (ii) Leave a schedule in a prominent position at the place searched; or
- 15 (iii) Send a schedule by registered mail to the owner, occupier, or person in charge.
- (3) Every schedule shall specify—
- (a) The documents, articles, and things removed; and
- (b) The place they were removed from; and
- (c) The place where they are being held.

20 **22. Prohibition on obstruction**—The owner, occupier, or person in charge, of a place that a person authorised pursuant to a warrant issued under **section 18** of this Act enters for the purpose of searching shall not obstruct that person.

- 25 **23. Offences**—(1) Where a person—
- (a) Avoids or attempts without reasonable excuse to avoid paying any levy payable by that person under a levy order; or
- 30 (b) Refuses or fails without reasonable excuse to collect any levy required to be collected by that person under a levy order; or
- (c) Refuses or fails without reasonable excuse to pass on or dispose of any levy collected by that person in the manner prescribed by a levy order; or
- 35 (d) Refuses or fails without reasonable excuse to issue an invoice to any other person in the manner prescribed by a levy order; or
- (e) Fails to keep or properly maintain records or accounts of any leviable activity carried on by that person sufficient to satisfy the requirements of any levy order; or
- 40 (f) Refuses or fails without reasonable excuse to submit (within the time required) any statement or return

- required to be submitted by that person under a levy order; or
- (g) Submits any statement or return required to be submitted by that person under a levy order that to that person's knowledge is false, incomplete, or misleading in a material particular; or 5
- (h) Refuses or fails, without reasonable excuse, to comply with any requirement made under **section 17 (1)** of this Act,—
- that person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$10,000. 10

Struck Out

- (2) Where a person fails without reasonable excuse, to comply with—
- (a) Any provision of this Act (other than **section 17 (1)**); or 15
- (b) Any provision of a levy order,—
- that person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$5,000.

- (3) Any offence against this Act committed by any employee or agent in the course of employment or agency shall be deemed to have been also committed by the employee's or agent's employer or principal if it is proved that the act or omission constituting the offence occurred with the employer's or principal's authority, permission, or consent. 20

24. Annual report and statements—(1) As soon as is *(practicable after the end of any year in respect of which a levy has been collected under a levy order for the benefit of an industry organisation, the organisation shall prepare)* practicable after the end of a financial year during which a levy has been paid to an industry organisation under a levy order, the organisation shall prepare in respect of the year— 25 30

- (a) Statements (relating only to money paid to the organisation under the order as levy, and assets acquired or built up with or out of, or by virtue of spending, money paid under the order as levy) of the organisation's financial position at the end of the year; and 35
- (b) Statements of the organisation's receipt and expenditure of money paid as levy under the order; and
- (c) All other statements necessary to show fully— 40

(i) The organisation's financial position as aforesaid;
and

5 (ii) The financial results of all of the organisation's activities involving the use of money paid to the organisation under the order as levy, or the use of assets acquired or built up with or out of, or by virtue
 (of spending, money paid under the order as levy; and the organisation shall ensure that the statements are audited within 90 days after the end of that year.) of spending,
 10 money paid under the order as levy;—

New

and the organisation shall ensure that the statements are audited within 90 days of the end of the year.

15 (2) Notwithstanding any enactment to the contrary, an industry organisation that is required by **subsection (1)** of this section to prepare statements in respect of any year shall include them in its annual report for that year.

20 (3) Subject to **subsection (4)** of this section, an industry organisation that is required by **subsection (2)** of this section to include statements in its annual report shall, as soon as the report has been completed, give a Minister a copy; and the Minister shall table it in the House of Representatives not later than 6 sitting days after receiving it.

25 (4) Where an enactment other than this Act—
 (a) Requires an industry organisation to give a Minister a copy of its annual report; and
 (b) Requires the Minister to table it in the House of Representatives,—

30 the organisation shall, to the extent that the enactment and **subsection (3)** of this section impose different requirements, comply with that enactment and not that subsection.

35 (5) An industry organisation that is required by **subsection (2)** of this section to include statements in its annual report shall take all reasonable steps to ensure that all persons primarily liable for paying the levy to which the statements (or any of them) relate receive a copy—

(a) As soon as is reasonably practicable after the report has been completed; and
 (b) Whether or not they are members of the organisation.

25. Repeal of other legislation relating to levies—

(1) Subject to **subsection (2)** of this section, the enactments specified in **subsection (3)** of this section are hereby repealed, with effect on the 1st day of January 1996.

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(2) A levy order made in respect of a commodity for the benefit of any industry organisation may, with effect on a day earlier than the 1st day of January 1996, repeal any enactment specified in **subsection (3)** of this section that relates to the imposition of a levy in respect of that commodity (or a related primary commodity) for the benefit of that organisation (or a predecessor of that organisation).

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New

(2) A levy order imposing on a commodity a levy payable to an industry organisation may, with effect on a day earlier than the 1st day of January 1996, repeal any enactment specified in **subsection (3)** of this section that relates to the imposition on or in respect of the commodity (or a related commodity) a levy payable to the organisation (or a predecessor of the organisation).

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(3) The enactments concerned are—

- (a) The Orchard Levy Act 1953:
- (b) The Vegetables Levy Act 1957:
- (c) The Vegetables Levy Amendment Act 1960:
- (d) The Berryfruit Levy Act 1967: 25
- (e) The Vegetables Levy Amendment Act 1972:
- (f) The Orchard Levy Amendment Act 1972:
- (g) The Vegetables Levy Amendment Act 1975:
- (h) The Vegetables Levy Amendment Act 1978:
- (i) The Hive Levy Act 1978: 30
- (j) The Vegetables Levy Amendment Act 1980:
- (k) The Vegetables Levy Amendment Act 1981:

New

(ka) Section 44 (1) of the Meat Act 1981:

- (l) Section 44 (2) of the Meat Act 1981: 35
- (m) The Hive Levy Amendment Act 1982:

- 5 (n) The Orchard Levy Amendment Act 1982:
 (o) The Berryfruit Levy Amendment Act 1983:
 (p) The Orchard Levy Amendment Act 1985:
 (q) The Orchard Levy Amendment Act 1987:
 (r) The Wheat Producers Levy Act 1987:
 (s) The Berryfruit Levy Amendment Act 1988:
 (t) The Orchard Levy Amendment Act 1988.

Struck Out

- 10 (u) The Wheat Industry Research Levies Act 1989.
 (4) When any enactment specified in **subsection (3)** of this section (other than section 44 (2) of the Meat Act 1981) is repealed under **subsection (1) or subsection (2)** of this section,—
 (a) So much of the Second Schedule to the Regulations (Disallowance) Act 1989 as relates to that Act; and
 15 (b) So much of the Schedule to the Ministry of Agriculture and Fisheries Act 1953 as relates to that Act,—
 shall then be deemed to have been repealed.

New

- 20 (4) When an enactment specified in **subsection (3)** of this section (other than section 44 (1) or section 44 (2) of the Meat Act 1981) is repealed by or under **subsection (1) or subsection (2)** of this section, so much of the Schedule to the Regulations (Disallowance) Act 1989 as relates to that Act shall then be deemed to have been repealed.

Section 18 (1)

SCHEDULE

FORM OF SEARCH WARRANT

SEARCH WARRANT

Section 18 (1), Commodity Levies Act 1990

To every constable:

(Or To [Full name], constable: and/or To [Full name], designated person)

Being satisfied on an application in writing made on oath (or on an application made on oath orally, the grounds for which I have noted in writing) that there is reasonable ground for believing that there is (are) in [*here describe building, box, receptacle, premises, or place*] the following thing(s) [*here insert description of the things to be searched for*] that there is reasonable ground to believe is (are) evidence of the commission of an offence against the Commodity Levies Act 1990, I hereby authorise you on one occasion within 30 days from the date of this warrant to enter and search the said with such assistance as may be necessary, and if necessary to use force for making entry, whether by breaking open doors or otherwise, and also to break open the box (receptacle) (*or any box or receptacle therein or thereon*) by force if necessary; and also to seize anything which there is reasonable ground to believe will be evidence as to the commission of the offence.

Dated at this day of19.....

.....
District Court Judge.
*(or Justice of the Peace.
or Registrar (not being a
constable).*