



**THE COMMODITY LEVIES (WINEMAKING GRAPES) ORDER
1992**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 21st day of December 1992

Present:

THE RIGHT HON. D. C. MCKINNON PRESIDING IN COUNCIL

PURSUANT to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

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ORDER

1. Title and commencement—(1) This order may be cited as the Commodity Levies (Winemaking Grapes) Order 1992.

(2) This order shall come into force on the 28th day after the date of its notification in the *Gazette*.

2. Interpretation—In this order, unless the context otherwise requires,—

“Buyer” means a person who buys grapes from a grower; and, in relation to any grapes bought from a grower, means the person who bought them:

“Council” means the body that was, on the commencement of this order, known as the New Zealand Grape Growers Council Incorporated:

“Farm-gate price”, in relation to any grapes, means the price paid to their grower for them (exclusive of goods and services tax under the Goods and Services Tax Act 1985):

“Grapes” means grapes of the species *Vitis* grown in New Zealand and intended to be used in the production of wine or grape juice:

“Grower” means a person who grows grapes for sale; and, in relation to any grapes, means their grower at the time of their harvest:

“Levy” means the levy imposed by clause 3 of this order:

“Levy money” means money paid under this order as levy:

“Mediator” means a person appointed under clause 21 (1) of this order; and, in relation to a dispute, means a mediator appointed to resolve that dispute:

“Person” includes a body corporate:

“Season” means a period of 12 months commencing on the 1st day of July.

3. Levy imposed—A levy is hereby imposed on all grapes sold by a grower to a buyer.

4. Levy payable to Council—The levy is payable to the body that is, on the commencement of this order, known as the New Zealand Grape Growers Council Incorporated.

5. Growers primarily responsible for payment of levy—The grower of any grapes is primarily responsible for paying the levy on them.

6. Buyer to pay levy—A buyer of grapes shall pay to the Council an amount equal to the levy on them.

7. Recovery of levy—A buyer of grapes who pays an amount to the Council in respect of the levy due for payment on those grapes may deduct from any money payable to a grower by the buyer, an amount equal to the levy payable on those grapes.

8. No collection or recovery fee to be charged—No buyer shall charge a collection or recovery fee to the Council for paying the levy or recovering it from a grower.

9. Levy to be paid at single rate—The levy is to be paid at a single rate.

10. Rate of levy to be percentage of farm-gate price—The rate of levy payable on any grapes is to be a percentage of the farm-gate price.

11. Maximum rate of levy—The maximum rate of the levy is 1.5 percent of the farm-gate price.

12. Council to fix actual rate of levy—(1) The Council shall, before the 1st day of December in each season, determine the actual rate of the levy for the season.

(2) Notwithstanding subclause (1) of this clause and clause 3 of this order, for the season ending with the 30th day of June 1993, the rate of levy is 0.5 percent of the farm-gate price.

13. Previous season's rate to apply where new rate not fixed in time—Notwithstanding clause 12 (1) of this order, where the Council has not set the actual rate of the levy for a season before the 1st day of December in the season, the actual rate of the levy for that season shall be the actual rate of the levy most recently fixed by the Council for a previous season.

14. Notification of rate of levy—As soon as practicable after fixing a rate of levy for a season, but not later than the 20th day of December in the season, the Council shall notify the rate of the levy for the season—

- (a) By notice in the Council's newsletters; and
- (b) By notice in the *Gazette*; and
- (c) By notice in one or more major metropolitan daily circulating newspapers; and
- (d) By letter to every grower and buyer whose address it has.

15. Time for payment of levy—The levy on grapes sold by a grower in any season is due and payable at the time the buyer is liable to pay the grower for the grapes, and shall be paid to the Council not later than the 20th day of June in that season.

16. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the payment to the Council of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture and Fisheries; and in that case the chief executive shall cause it to be paid to the Council.

17. Levy money to be spent by council—(1) Subject to subclause (2) of this clause, the Council shall spend or (pending its expenditure) invest all levy money paid to it.

(2) The Council may pay any amount of levy money to any of its Regional Associations, which may spend it or (pending its expenditure) invest it.

18. Consultation on how levy money to be spent—(1) At least every 12 months, the Council shall consult growers on how levy money is proposed to be spent and provide details as to the previous 12 months' expenditure.

(2) Consultation and communication under subclause (1) of this clause shall be by means of—

- (a) Newsletters to growers whose addresses the Council has; and

- (b) Meetings advertised in the major metropolitan daily circulating newspapers.

19. Confidentiality of information—(1) Subject to subclause (2) of this clause, no person involved in managing, or employed by the management of, the Council shall disclose (otherwise than to some other person who is involved in managing, or employed by the management of, the Council) any information obtained, or obtained as a result of actions taken,—

- (a) Under this order; or
 (b) In relation to this order, under the Commodity Levies Act 1990.
 (2) Nothing in subclause (1) of this clause affects or prevents—
 (a) The production of records or accounts under section 17 (1) of the Commodity Levies Act 1990; or
 (b) The giving of evidence in any legal proceedings taken—
 (i) Under or in relation to this order; or
 (ii) In relation to this order, under or in relation to the Commodity Levies Act 1990.

20. Records—(1) A buyer of any quantity of grapes from a grower shall keep, and retain for 2 years, after the end of the season in which the grapes were bought, the following particulars in respect of the grapes:

- (a) The quantity;
 (b) The variety;
 (c) The name of the grower;
 (d) The farm-gate price paid;
 (e) The amount of the levy;
 (f) The date when the levy was paid.

(2) The Council shall keep, and retain for 2 years after the end of the season in which it was paid, records of each amount of levy money paid to it, and in relation to each amount, the following matters:

- (a) The day on which it was received;
 (b) The person who paid it;
 (c) How (if at all) it was invested.

(3) The Council shall keep, and retain for 2 years after the end of the season in which it was invested or spent, records of every amount of levy money paid to it (whether in that season or any earlier season) that it has invested or spent, and—

- (a) In relation to every amount invested, records of how it was invested; and
 (b) In relation to every amount spent, how and when it was spent.

(4) A buyer of grapes from a grower shall, upon request by the Council, provide it with details of records kept pursuant to subclause (1) of this clause.

Mediation

21. Appointment of mediators—(1) If a dispute arises as to—

- (a) Whether or not any person is required to pay the levy; or
 (b) The amount of levy money any person is required to pay,—

any party to the dispute may ask the President of the New Zealand Society of Chartered Accountants to appoint a person to resolve the dispute by mediation; and in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.

(2) The mediator's appointment shall be determined if—

- (a) The parties to the dispute have resolved it by agreement; or
- (b) The parties to the dispute have not resolved it by agreement, and the mediator has resolved it by coming to one or more findings in relation to it.

22. Remuneration of mediators—(1) Subject to subclause (2) of this clause, a mediator shall be paid remuneration (by way of fees and allowances) agreed by the parties to the dispute concerned.

(2) If the parties to a dispute cannot agree a mediator's remuneration, the President of the New Zealand Society of Accountants (or a person authorised by the President to do so) shall—

- (a) Fix an amount or several amounts to be paid to the mediator as remuneration; and
- (b) Specify the party by which each amount is to be paid.

(3) Each party shall pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

23. Time and place of conference—Every conference of the parties to a dispute by a mediator shall be held on a day and at a time and place fixed, and notified in writing to the parties, by the mediator.

24. Conference to be held in private—Except as provided in clause 25 of this order, only the parties to a dispute and the mediator shall attend a conference organised by the mediator.

25. Representatives—If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties to the dispute organised by the mediator.

26. Right to be heard—Every party to a dispute, and every representative of such a party allowed by the mediator to attend a conference of the parties to the dispute organised by a mediator, may be heard at the conference.

27. Evidence—(1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally be admissible in a Court of law.

(2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to enable a dispute to be settled or resolved.

(3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

28. Mediator may resolve dispute in certain cases—If—

- (a) The mediator has organised and presided at a conference of the parties but the dispute has not been settled; or
- (b) The mediator believes that the parties are unlikely to settle the dispute, whether or not they confer directly,—

the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's resolution of the dispute, and the mediator's reasons for determining that particular resolution.

29. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 28 of this order may appeal to a District Court against the decision.

(2) The appeal shall be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.

(3) The Registrar of the Court shall—

(a) Fix the time and place for the hearing of the appeal, and notify the appellant and the other parties to the dispute; and

(b) Serve a copy of the notice of appeal on every other party to the dispute.

(4) Every party may appear and be heard at the hearing of the appeal.

(5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.

(6) The filing of a notice of appeal shall not operate as a stay of any process for the enforcement of the decision appealed against.

BOB MacFARLANE,
Acting for Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force 28 days after notification in the *Gazette*, imposes on all grapes intended to be used in the production of wine and or grape juice a levy payable to the New Zealand Grape Growers Council Incorporated.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 23 December 1992.

This order is administered in the Ministry of Agriculture and Fisheries.