



**THE COMMODITY LEVIES (BLUEBERRIES) ORDER 1995**

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CATHERINE A. TIZARD, Governor-General

**ORDER IN COUNCIL**

At Wellington this 16th day of October 1995

Present:

THE HON. DOUG KIDD 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 (Blueberries) Order 1995.

(2) This order shall come into force on the 1st day of January 1996.

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

“The association” means the society (incorporated under the Incorporated Societies Act 1908) whose name, immediately before the commencement of this order, was the New Zealand Blueberry Growers Association Incorporated:

“Collection agent” means a person whose business (whether alone or together with any other business) is the purchase from growers and export from New Zealand of blueberries; and, in relation to any blueberries sold by their grower to a collection agent, means the collection agent to whom or which they were sold:

*Commercial Grower*—

(a) Subject to paragraph (b) of this definition, means the publication that, before the commencement of this order, was from time to time published under that name (under whatever name it may later be published); but

(b) Where the publication referred to in paragraph (a) of this definition has ceased to be published, means a publication for the time being specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*:

“Export fresh blueberries” means blueberries—

(a) Exported fresh from New Zealand by their grower; or

(b) Sold fresh by their grower for export from New Zealand fresh:

“Export frozen blueberries” means blueberries—

(a) Exported frozen from New Zealand by their grower; or

(b) Sold by their grower for export from New Zealand frozen:

“Fresh” means having never been frozen:

“Frozen” includes thawed:

“Grower” means person who or that grows blueberries for sale:

“GST” means goods and services tax under the Goods and Services Tax Act 1985:

“The industry” means the blueberry industry:

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

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

“Local fresh blueberries” means blueberries sold fresh by their grower—

(a) Otherwise than for export; and

(b) Otherwise than for freezing:

“Local frozen blueberries” means blueberries sold (otherwise than for export) by their grower frozen or for freezing:

“Mediator” means person appointed under clause 23 of this order; and, in relation to a dispute, means mediator appointed to resolve that dispute:

“Payment year” means a period of 12 months ending with the 30th day of June; and includes the period commencing on the 1st day of January 1996 and ending with the 30th day of June 1996.

**3. Levy imposed**—There is hereby imposed on the commodity specified in paragraph (a) of this clause a levy payable to the industry organisation specified in paragraph (b) of this clause; and for the purposes of this order there are hereby specified—

- (a) All blueberries (whether fresh or frozen)—
  - (i) Produced in New Zealand; and
  - (ii) Sold in or exported from New Zealand; and
- (b) The association.

**4. Growers primarily responsible for paying levy**—The grower of blueberries is primarily responsible for paying the levy on them.

**5. Levy imposed on basis of weight of blueberries**—The levy on blueberries sold during any year is to be calculated on the basis of their weight.

**6. Collection agents to pay levy on blueberries sold to them**—A collection agent shall pay the levy on all blueberries sold to that agent by their grower; but may recover it (and any GST paid in respect of it) from that grower by reducing the price otherwise payable to the grower for them or for any other blueberries bought from the grower.

**7. No entitlement to collection or recovery fee**—Collection agents are not entitled to charge the association a fee for paying and recovering the levy.

**8. Growers to pay levy in other cases**—The grower of blueberries—

- (a) Sold in New Zealand to a person who or that is not a collection agent; or
  - (b) Exported from New Zealand before being sold,—
- shall pay the levy on them.

**9. Confidentiality of information**—(1) Subject to subclause (2) of this clause, no officer or employee of the association shall disclose (otherwise than to some other person who is an officer or employee of the association) any commercially sensitive 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 production of any statement under section 25 of the Commodity Levies Act 1990; or
  - (c) 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.

(3) Nothing in this clause prevents the association from disclosing or using any information (not being information relating to an identifiable grower), obtained from a ballot held before the commencement of this order.

(4) Nothing in subclause (1) of this clause prevents the association from disclosing or using any information with the consent of every identifiable grower to whom or which it relates.

**10. Association to consult growers on purposes for which levy money to be spent**—The association shall consult growers as to how it is to spend levy money—

- (a) At each annual general meeting; and
- (b) From time to time through the ward representatives elected to its executive.

**11. Association to spend levy money**—The association shall spend or (pending its expenditure) invest all levy money paid to it.

**12. Collection agents to pay levy monthly**—A person required by clause 6 of this order to pay the levy on any blueberries shall pay that levy monthly.

**13. Growers to pay levy annually**—A person required by clause 8 of this order to pay the levy on any blueberries shall pay that levy annually in respect of payment years.

**14. Levy to be paid at different rates**—The levy is to be paid at 4 different rates on local fresh blueberries, local frozen blueberries, export fresh blueberries, and export frozen blueberries.

**15. Initial rates of levy**—The rates of the levy for the payment year ending with the 30th day of June 1996 are to be fixed by the association, with the approval of the Minister of Agriculture, by notice in the *Gazette*.

**16. Later rates of levy**—Subject to clause 17 of this order, rates of the levy for later payment years are to be fixed by the association.

**17. Restriction on increases in rates**—The association shall not fix a rate of the levy for any payment year under clause 16 of this order unless,—

- (a) It is no greater than the corresponding rate for the year before; or
- (b) It—

- (i) Was approved by growers at the most recent annual general meeting of the association; and

- (ii) Is proportionately greater than the corresponding rate for the year before by no more than the annual percentage increase in the Consumers' Price Index most recently released before that meeting; or

- (c) It—

- (i) Was approved by growers at the most recent annual general meeting of the association; and

- (ii) Was later approved by the Minister of Agriculture.

**18. Rates if no rates fixed**—Notwithstanding clause 16 of this order, if no rate is fixed under that clause for any payment year in respect of local fresh blueberries, local frozen blueberries, export fresh blueberries, or export frozen blueberries, the levy for that year shall be payable in respect of blueberries of that kind at the rate last fixed for blueberries of that kind under this order.

**19. Notification of rates of levy**—As soon as is practicable after the fixing of any rate of levy for a year, the association shall publish in the *Commercial Grower* and the *Gazette* a notice of the rate, the blueberries to which it applies, and the payment year to which it relates.

**20. Monthly payments payable on 20th of following month**—Amounts of levy money required by clause 12 of this order to be paid monthly shall be paid (together with any GST payable in respect of those amounts) no later than the 20th day of the month after the month in which the blueberries to which they relate were sold by their grower.

**21. Annual payments payable on 31 July**—Amounts of levy money required by clause 13 of this order to be paid annually shall be paid (together with any GST payable in respect of those amounts) no later than the 31st day of July after the payment year during which they were sold or exported by their grower.

**22. Conscientious objectors**—Any grower who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the chief executive of the Ministry of Agriculture; and in that case the chief executive shall cause it to be paid to the association.

**23. 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 it by mediation; and in that case the President (or a person authorised by the President to do so) may appoint a person to do so.

(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.

**24. 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 amount (if any) that each party is to pay.

(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.

**25. Time and place of conference**—Every conference of the parties to a dispute organised 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.

**26. Conference to be held in private**—Except as provided in clause 27 of this order, only the parties to a dispute and the mediator may attend a conference of those parties organised by the mediator.

**27. 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.

**28. 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.

**29. 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.

**30. Mediator may determine 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.

**31. Appeal to District Court**—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 30 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.

**32. Records**—(1) Every grower shall ensure that there are kept, and retained for at least 7 years after they are kept, records of—

(a) The quantities of blueberries sold fresh; and

(b) The quantities of blueberries sold frozen; and

(c) The quantities of blueberries exported fresh; and

(d) The quantities of blueberries exported frozen.

(2) Every collection agent shall ensure that there are kept, and retained for at least 7 years after they are kept, records of—

(a) The names and addresses of the growers from whom or which the collection agent has bought blueberries:

- (b) The quantities bought fresh from each grower and, in relation to each,—
  - (i) The quantity exported fresh; and
  - (ii) The quantity exported frozen:
- (c) The quantities bought frozen from each grower:
- (d) In relation to each quantity, the rate at which the levy was deducted.
- (3) The association shall keep, and shall ensure that there are retained for at least 7 years after they are kept,—
  - (a) Records of each amount of levy money paid to it, and, in relation to each amount,—
    - (i) The day on which it was received; and
    - (ii) The person who paid it; and
  - (b) Records of—
    - (i) How (if at all) levy money paid to it was invested; and
    - (ii) How and when all levy money spent by it was spent.

MARIE SHROFF,  
Clerk of the Executive Council.

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EXPLANATORY NOTE

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

This order, which comes into force on 1 January 1996, (and unless earlier revoked expires 6 years after it was made), imposes on blueberries a levy payable to the New Zealand Blueberry Growers Association Incorporated.

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

Date of notification in *Gazette*: 19 October 1995.

This order is administered in the Ministry of Agriculture.