



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

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.

**ANALYSIS**

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28. Mediator may determine dispute in  
certain cases  
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30. Growers to keep records of gardens  
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payments, etc.

## ORDER

**1. Title and commencement**—(1) This order may be cited as the Commodity Levies (Berryfruit) Order 1995.

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

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

“Berryfruit”—

(a) Means any of the following: auroraberries, blackberries, blackcurrants, blueberries, boysenberries, cape gooseberries, cranberries, elderberries, gooseberries, keriberries, loganberries, marionberries, ollalieberries, raspberries, redcurrants, strawberries, tayberries; and

(b) Includes the fruit of any plant that is a hybrid of plants that produce berryfruit:

“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*:

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

“Garden”, subject to subclause (2) of this clause, means area of land devoted to growing berryfruit for sale:

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

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

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

“Levy year” means a period of 12 months ending with the 30th day of September:

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

(2) Where a person grows berryfruit in 2 or more gardens for the purposes of sale, they shall, for the purposes of this order, be treated as a single garden whose area is the sum of their individual areas.

**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 berryfruit grown in New Zealand for the purposes of sale; and

(b) The federation.

**4. Growers primarily responsible for paying levy**—Subject to clause 6 of this order, the grower of berryfruit is primarily responsible for paying the levy on it.

**5. Levy imposed on basis of area of land devoted to production of berryfruit**—The levy on berryfruit grown for the purposes of sale in any garden during any levy year is to be calculated on the basis of the area of the garden (calculated in accordance with clause 2 (2) of this order) as at the 1st day of October in that year.

**6. Occupiers of certain small gardens exempted**—A grower whose garden has a total area (calculated in accordance with clause 2 (2) of this order) of less than 200m<sup>2</sup> as at the 1st day of October in any levy year is exempt from paying the levy in respect of that year.

**7. Growers to pay levy**—Subject to clause 6 of this order, the grower of berryfruit shall pay the levy on it.

**8. Confidentiality of information**—(1) Subject to subclause (2) of this clause, no officer or employee of the federation shall disclose (otherwise than to some other person who is an officer or employee of the federation) 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 subclause (1) of this clause prevents the federation 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 federation from disclosing or using any information with the consent of every identifiable grower to whom or which it relates.

**9. Federation to consult growers on purposes for which levy money to be spent**—The federation 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 appropriate district representatives elected to its executive.

**10. Federation to spend levy money**—The federation shall spend or (pending its expenditure) invest all levy money paid to it.

**11. Levy to be paid annually in respect of levy year**—The levy is to be paid annually in respect of levy years.

**12. Levy to be paid at different rates**—The levy is to be paid at 2 different rates, with the different rates to apply to—

- (a) Gardens whose total area (calculated in accordance with clause 2 (2) of this order) is less than 8000m<sup>2</sup> and not less than 200m<sup>2</sup>; and
- (b) Gardens whose total area (calculated in accordance with clause 2 (2) of this order) is not less than 8000m<sup>2</sup>.

**13. Initial rates of levy**—The rates of the levy for the levy year ending with the 30th day of September 1997 are to be fixed by the federation, with the approval of the Minister of Agriculture, by notice in the *Gazette*.

**14. Later rates of levy**—Subject to clause 15 of this order, rates of the levy for later levy years are to be fixed by the federation.

**15. Restriction on increases in rates**—The federation shall not fix a rate of the levy for any levy year under clause 14 of this order unless,—

- (a) It is no greater than the rate for the levy year before; or
- (b) It—
  - (i) Was approved by growers at the most recent annual general meeting of the federation; and
  - (ii) Is proportionately greater than the rate for the levy 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 federation; and
  - (ii) Was later approved by the Minister of Agriculture.

**16. Rates if no rates fixed**—Notwithstanding clause 14 of this order, if no rate is fixed under that clause for any levy year in respect of gardens of any size, the levy shall for that year be payable in respect of gardens of that size at the rate last fixed for gardens of that size under this order.

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

**18. Due and latest days for payment**—The levy payable in respect of any levy year becomes due for payment on the 31st day of October in that year; and the latest day for its payment is the 20th day of November in that year.

**19. Returns by growers**—Every grower shall, as soon as is reasonably practicable after the 1st day of October in any levy year give the federation notice in writing of the area of the grower's garden (calculated in accordance with clause 2 (2) of this order) on that day.

**20. 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 federation.

**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 organise and preside at a conference of the parties to the dispute, and 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.

**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 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.

**23. 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.

**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 may attend a conference of those parties 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 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.

**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.

**30. Growers to keep records of gardens**—(1) As soon as may be after the 1st day of October in each levy year, every grower shall record in writing the area (calculated in accordance with clause 2 (2) of this order) of the grower's garden on that day.

(2) Every person required by subclause (1) of this clause to record the area of any garden on the 1st day of October in any levy year shall retain the record made until the expiration of 7 years from the day to which it relates.

**31. Federation to keep records of payments, etc.**—The federation 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 certain berryfruit a levy payable to the New Zealand Berryfruit Growers Federation (Incorporated). The berryfruit on which the levy is payable are auroraberries, blackberries, blackcurrants, blueberries, boysenberries, cape gooseberries, cranberries, elderberries, gooseberries, keriberries, loganberries, marionberries, ollalieberries, raspberries, redcurrants, strawberries, tayberries, and hybrids of any of those berries.

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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.