



THE COMMODITY LEVIES (PIPFRUIT) ORDER 1996

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 8th day of July 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 4 of the Commodity Levies Act 1990, His 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 (Pipfruit) Order 1996.

(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,—

“Grower”, at any time, means the occupier of land—

(a) That at that time is used for growing trees for the production of pipfruit for commercial purposes; and

(b) From which there was harvested at least 1000 tray-carton equivalents of pipfruit during the year ending with the previous 31st day of October:

“Grower’s orchard”, in relation to any grower at any time, means the orchard or orchards of which the grower is or was the occupier at that time:

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

“Levy” means the 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 beginning on the 1st day of November and ending with the following 31st day of October, and—

(a) Includes the period commencing on the commencement of this order and ending with the 31st day of October 1996; but

(b) Does not include the period commencing on the 1st day of November 2001 and ending with the expiry of this order:

“Mediator” means a person appointed under clause 23 (1) of this order; and, in relation to a dispute, means a mediator appointed to resolve that dispute:

“Occupier” has the meaning given to that term by section 2 of the Rating Powers Act 1988:

“Orchard” means any land on which trees are grown for the purpose of producing pipfruit:

“*The Orchardist*”—

(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*:

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

“Person” includes a body corporate:

“Pipfruit” means apples (being fruit of the plant of the Genus *Malus*), European pears (being fruit of the plant of the species *Pyrus communis*), or both:

“Tray-carton equivalent” means 18.8 kg.

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) Pipfruit; and
- (b) The organisation.

4. Growers primarily responsible for payment of levy—The grower of pipfruit is primarily responsible for paying the levy on it.

5. Growers to pay levy—The grower of pipfruit shall pay the levy on it.

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

7. Basis of calculation of levy—(1) The levy payable by any grower in the period commencing on the commencement of this order and ending with the 31st day of October 1996 is to be calculated by reference to the total quantity of pipfruit harvested, from the grower’s orchard as at the commencement of this order, in the period commencing on the 1st day of November 1994 and ending with the 31st day of October 1995.

(2) Subject to subclause (1) of this clause, the levy payable by any grower in any levy year is to be calculated by reference to the total quantity of pipfruit harvested, from the grower’s orchard as at the 31st day of January in that year, in the previous levy year.

8. Maximum rate of levy—The maximum rate of levy is 3 cents per tray-carton equivalent of pipfruit, plus GST.

9. Organisation to fix actual rate of levy—(1) The organisation may fix the actual rate of the levy in the levy year ending with the 31st day of October 1996 by whatever means it may lawfully make decisions.

(2) For any subsequent levy year, the organisation shall fix the actual rate of the levy at the annual general meeting of the organisation held in the previous levy year.

10. Rate if no rate fixed—If before the 1st day of November in any levy year no rate of levy has been fixed by the organisation for that year, the levy for that year shall be payable at the rate last fixed under clause 9 of this order.

11. Notification of rate of levy—As soon as is practicable after fixing a rate of levy for a levy year, the organisation shall notify it—

- (a) By notice in *The Orchardist*; and
- (b) By notice in the *Gazette*; and
- (c) By notice in a publication of the organisation (if any).

12. Minimum amount of levy payable—Except as provided for in clause 7 of this order, the minimum amount of levy payable per grower is \$150 plus GST in each levy year.

13. Maximum amount of levy payable—Subject to clause 16 of this order, the maximum amount of levy payable per grower is \$2000 plus GST in each levy year.

14. Payment by growers to be annual—The due day for the payment of levy is the day on which the grower receives an invoice for the levy from the organisation; and the latest day for payment is the following 31st day of March, except in the first levy year when the latest day for payment is the last day of the month following the month in which the invoice is received.

15. Extensions of time for paying levy—If satisfied that, by reason of exceptional circumstances, any grower is unable by the latest day for payment to pay all or any part of the levy payable by the grower, the organisation may (in its absolute discretion) allow the grower an extension of time for its payment.

16. Additional levy payable where levy not paid in time—Where any amount of levy has not been paid by the close of the latest day for payment, there shall be paid to the organisation, in addition to the amount otherwise payable, an additional amount calculated at the rate of 10 percent of the amount that was not paid by the close of that day.

17. Levy money to be spent by organisation—The organisation shall spend or (pending its expenditure) invest all levy money paid to it.

18. Consultation on how levy money to be spent—In each levy year, the organisation shall consult growers on how levy money is proposed to be spent, and consultation shall be by means of—

- (a) Newsletters to growers whose addresses the organisation has; and
- (b) Annual general meetings; and
- (c) Advertisement in *The Orchardist*; and
- (d) Any other manner the organisation thinks fit.

19. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the manner of recovery by the organisation of an amount of levy money 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 organisation.

20. Confidentiality of information—(1) No officer or employee of the organisation may disclose (otherwise than to some other officer or employee of the organisation) 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 organisation from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(4) Nothing in subclause (1) of this clause prevents the disclosure to, and use of, any information by the organisation's returning officer to determine the voting entitlements and to count the votes of members of the organisation.

(5) Nothing in subclause (1) of this clause prevents the organisation from disclosing or using any information with the consent of every identifiable person to whom it relates.

21. Returns by growers—Every grower shall, as soon as is reasonably practicable after receiving the organisation's written request for the grower to do so, give the organisation notice in writing of such information as the organisation requires that will enable the organisation to calculate the amount of levy under clause 7 of this order.

22. Records—(1) Every grower shall keep records of the total production in tray-carton equivalents of pipfruit harvested from the grower's orchard in each levy year.

(2) Every grower shall ensure that the records are retained for at least 7 years after they are made (or are required to be made).

(3) The organisation shall in every levy year keep records of—

(a) Each amount of levy money paid to it in that year and, in relation to each amount,—

(i) The day on which it was received; and

(ii) The person who paid it; and

(b) How (if at all) levy money paid to it in that year was invested; and

(c) How and when all levy money spent by it in that year was spent;—and shall ensure that the records are retained for at least 7 years after the end of that year.

(4) Nothing in this clause requires any person to keep a nil record.

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

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 shall attend a conference 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 resolve dispute in certain cases—(1) 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 decision and the reasons for that decision.

(2) Subject to clause 31 of this order, the parties shall comply with any decision of the mediator under subclause (1) of this clause.

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. Remuneration of persons conducting compliance audits—A person appointed as Auditor under section 15 of the Commodity Levies Act 1990 shall be remunerated by the organisation at a rate determined by the Minister after consultation with the organisation.

MARIE SHROFF,
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 pipfruit produced by commercial growers a levy payable to Pipfruit Growers New Zealand Incorporated.

Unless earlier revoked, the order expires 6 years after it was made.

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

Date of notification in *Gazette*: 11 July 1996.

This order is administered in the Ministry of Agriculture.