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THE COMMODITY LEVIES (PASSIONFRUIT) ORDER 1996

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of December 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.

ANALYSIS

- | | |
|---|--|
| 1. Title and commencement | 18. Association to spend levy money |
| 2. Interpretation | 19. Conscientious objectors |
| 3. Levy imposed | 20. Consultation on how levy money to be spent |
| 4. Growers primarily responsible for paying levy | 21. Confidentiality of information |
| 5. Collection agents to pay levy on passionfruit bought or sold but may recover it from growers | 22. Records |
| 6. Growers to pay levy in other cases | 23. Appointment of mediator in case of dispute |
| 7. Levy to be paid at single rate | 24. Remuneration of mediators |
| 8. Basis of calculation of levy | 25. Time and place of conference |
| 9. Collection fee | 26. Conference to be held in private |
| 10. Maximum rate | 27. Representatives |
| 11. Association to fix actual rate of levy | 28. Right to be heard |
| 12. Rate if no rate fixed | 29. Evidence |
| 13. Notification of rate of levy | 30. Mediator may resolve dispute in certain cases |
| 14. Returns | 31. Appeal to District Court |
| 15. Payments to be monthly | 32. Remuneration of persons conducting compliance audits |
| 16. Extensions of time for paying levy | |
| 17. Additional levy payable where levy not paid in time | |
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ORDER

1. Title and commencement—(1) This order may be cited as the Commodity Levies (Passionfruit) 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,—

“Association” means the society (incorporated under the Incorporated Societies Act 1908) whose name, immediately before the commencement of this order, was The N. Z. Passionfruit Growers Association Incorporated:

“Collection agent” means a person whose business is or includes—

(a) Buying passionfruit from their grower for resale fresh (otherwise than as part of a meal), export fresh, or processing for resale or export; or

(b) Selling or exporting passionfruit on behalf of their grower:

“F. o. b. value”, in relation to any quantity of passionfruit exported from New Zealand in respect of which a customs entry has been made, means the value of those passionfruit as specified in the declaration attached to or forming part of the entry:

“Fresh” means not processed:

“Grower” means a person whose business is or includes the growing of passionfruit for sale, export, or processing:

“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 or payable under this order as levy:

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

“Month” means calendar month:

“*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*:

“Passionfruit” means the fruit of the purple passionfruit plant (*Passiflora edulis*):

“Person” includes a body corporate; and “who” includes “that” and “whom” includes “which”:

“Processed” includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, and preserved,—

(a) Whether as passionfruit or as concentrate, pulp, puree, sauce, or some other product; and

(b) Whether alone or with other ingredients;—

and “processing” has a corresponding meaning:

“Selling price” means a price—

(a) Exclusive of GST; and

(b) Before deduction of any costs or charges:
 “Year” means calendar year.

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) Passionfruit grown in New Zealand for export, processing, or sale:
- (b) The association.

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

5. Collection agents to pay levy on passionfruit bought or sold but may recover it from growers—A collection agent who buys passionfruit from their grower (otherwise than through any other collection agent), or sells or exports fresh passionfruit on their grower’s behalf,—

- (a) Shall (subject to clause 9 of this order) pay the levy on them monthly;
 but
- (b) May recover it (and any GST paid in respect of it) from the grower by reducing the amount otherwise payable to the grower for the passionfruit or any other passionfruit bought from the grower or sold or exported on the grower’s behalf.

6. Growers to pay levy in other cases—The grower of passionfruit who—

- (a) Sells them to consumers at or near the place where they were grown;
 or
 - (b) Exports them from New Zealand; or
 - (c) Processes them,—
- shall pay the levy on them monthly.

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

8. Basis of calculation of levy—(1) The levy is to be calculated—

- (a) In the case of passionfruit processed by their grower, on the basis of a notional price determined by the association under subclause (2) or subclause (3) of this clause:
 - (b) In the case of passionfruit exported by their grower, on the basis of their f. o. b. value:
 - (c) In the case of passionfruit sold by or on behalf of their grower, on the basis of the selling price at the sale.
- (2) The notional price of passionfruit, exclusive of GST (if any), processed by any grower in any year after 1997 shall be fixed by the association at its annual general meeting in the year before.
- (3) The notional price of passionfruit, exclusive of GST (if any), processed by any grower in 1997 shall be determined by the Executive Committee of the association by any means by which it may lawfully make decisions.

9. Collection fee—A person required by clause 5 of this order to pay the levy on any passionfruit may, by deducting it from any amount of levy money otherwise payable to the association in respect of those passionfruit, charge the association—

(a) A fee of 10 percent of the amount of that money, inclusive of GST (if any); and

(b) The GST payable in respect of that fee,—
for paying and recovering the money.

10. Maximum rate—The maximum rate of the levy is 2 percent of selling price, notional price, or f. o. b. value (plus GST, if any).

11. Association to fix actual rate of levy—(1) The association shall fix the actual rate of the levy for any year after 1997 at its annual general meeting in the year before.

(2) The actual rate of the levy for 1997 shall be fixed by the Executive Committee of the association by any means by which it may lawfully make decisions.

12. Rate if no rate fixed—If in any year after 1997 no rate of levy has been fixed by the association for the next year, the levy for the next year shall be payable at the rate last fixed under clause 11 of this order.

13. Notification of rate of levy—As soon as is practicable after fixing a rate of levy for any year, the association shall by notice in *The Orchardist* and the *Gazette*, publish the rate and year.

14. Returns—(1) Every grower shall, on or before the latest day for payment of the levy in each month, give the association written notice of—

(a) The total of the amounts—

(i) Exclusive of GST; and

(ii) Before deduction of any costs or charges,—

paid, or to be paid, to the grower for passionfruit that the grower grew, and sold to consumers in the previous month at or near the place where they were grown; and

(b) The total f. o. b. value of every consignment of passionfruit grown by the grower that the grower exported from New Zealand fresh in the previous month; and

(c) The total quantity and notional price of passionfruit grown by the grower that were processed in the previous month by the grower.

(2) Every collection agent shall, on or before the latest day for payment of the levy in each month, give the association written notice in respect of every grower concerned of—

(a) The total of the amounts—

(i) Exclusive of GST; and

(ii) Before deduction of any costs or charges,—

paid or to be paid for all passionfruit the agent bought from their grower (otherwise than through another collection agent) during the previous month for resale, export, or processing; and

(b) The total of the amounts—

(i) Exclusive of GST; and

(ii) Before deduction of any costs or charges,—

paid or to be paid for of all fresh passionfruit the agent sold on their grower's behalf during the previous month; and

(c) The f. o. b. value of all fresh passionfruit the agent exported on their grower's behalf during the previous month.

15. Payments to be monthly—(1) The due day for the payment of amounts of the levy under clause 5 of this order—

- (a) In the case of passionfruit bought from their grower by a collection agent, is the day on which the agent buys them; and
- (b) In the case of passionfruit sold or exported by a collection agent on their grower's behalf, is the day on which the agent sells or exports them;—

and the latest day for payment is the 20th day of the following month.

(2) The due day for the payment of amounts of the levy under clause 6 of this order is the day on which the passionfruit concerned were sold, exported, or processed; and the latest day for payment is the 20th day of the following month.

16. Extensions of time for paying levy—If satisfied that, because of exceptional circumstances, a person is unable to pay any levy money on or before the latest day for payment, the association may (in its absolute discretion) allow the person an extension of time for paying it.

17. Additional levy payable where levy not paid in time—Where any levy money has not been paid on or before the latest day for payment (or any later day allowed by an extension under clause 16 of this order), there shall be paid to the association, in addition to the amount otherwise payable, an amount calculated at the rate of 10 percent of that money.

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

19. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the manner of recovery by the association 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 association.

20. Consultation on how levy money to be spent—(1) Every year, at its annual general meeting or some other general meeting, the association shall consult growers on how levy money is to be spent in the next year.

(2) For the purposes of subclause (1) of this clause, the association shall—

- (a) Publish in *The Orchardist* a general invitation to growers to attend the meeting concerned; and
- (b) Send to growers whose postal addresses it knows a written invitation (whether as a separate document or as part of or in a notice in some other publication or document) to attend that meeting; and
- (c) Circulate before that meeting a draft budget and plan for the spending of levy money in the next year; and
- (d) Ensure that all growers who attend that meeting (and in the case of growers that are bodies corporate, all officers of those growers who attend the meeting) have an opportunity to speak on how levy money is to be spent, whether or not they are members of the association and otherwise entitled to participate in the meeting.

21. Confidentiality of information—(1) This clause applies to every person who is—

- (a) An officer or employee of the association; or
- (b) A returning officer appointed by the association.

(2) Subject to this clause, no person to whom this clause applies may disclose (otherwise than to some other such person) 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.

(3) Nothing in subclause (2) 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.

(4) Nothing in subclause (2) of this clause prevents the association from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(5) Nothing in subclause (2) 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.

(6) Nothing in subclause (2) of this clause prevents the organisation from disclosing or using any information with the consent of every identifiable person to whom it relates.

22. Records—(1) Every grower shall—

(a) In every year, keep records of—

(i) The quantities of passionfruit grown by the grower that were sold to or by collection agents in that year, and the payments received for those quantities; and

(ii) The quantity of passionfruit that the grower grew, and sold to consumers in that year at or near the place where it was grown, and the payments received for that quantity; and

(iii) The quantities of passionfruit grown by the grower that were exported in that year (by or on behalf of the grower), and the f. o. b. values of those quantities; and

(iv) The quantities of passionfruit that were processed by the grower in that year, and the notional prices of those quantities; and

(b) Ensure that the records are retained for at least 7 years after the end of that year.

(2) Every collection agent shall in every year keep, in respect of every grower from whom the agent bought passionfruit in that year for resale, export, or processing, or on whose behalf the agent sold or exported passionfruit grown by the grower, records of—

(a) The quantities of passionfruit bought (otherwise than through another collection agent); and

(b) The price paid for each quantity bought; and

(c) The quantities of passionfruit grown by the grower sold or exported on the grower's behalf; and

(d) The price received for each quantity sold; and

(e) The f. o. b. value of each quantity exported; and

(f) The amount of levy money paid to the association in respect of each quantity; and

(g) The collection fee deducted in respect of each amount;—

and shall ensure that the records are retained for at least 7 years after the end of that year.

(3) The association shall in every 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 mediator in case of dispute—(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 the dispute by agreement; or

(b) The parties have not resolved the dispute 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 on 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 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 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 a 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 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 an auditor under section 15 of the Commodity Levies Act 1990 shall be remunerated by the association at a rate determined by the Minister after consultation with the association.

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 passionfruit a levy payable to the N. Z. Passionfruit Growers Association 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*: 19 December 1996.
This order is administered in the Ministry of Agriculture.