



ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Interpretation</p> <p>3. Levy for United Wheatgrowers (N.Z.) Limited</p> <p>4. Determination of rate of levy</p> <p>5. Notification of rate of levy</p> <p>6. Recovery and collection of levy</p> <p>7. Liability of producer to cease when levy deducted from purchase price</p> <p>8. United Wheatgrowers to supply information relating to total amount of levy received</p> <p>9. Invoice to be issued</p>	<p>10. Collection fee</p> <p>11. Particulars of levy</p> <p>12. Trust in relation to levy</p> <p>13. Expenditure of levy</p> <p>14. Power to inspect books and obtain information</p> <p>15. Report on exercise of powers to inspect books and obtain information</p> <p>16. Disclosure of information obtained pursuant to power to inspect books and obtain information</p> <p>17. Offences</p> <p>18. Amendment to Ministry of Agriculture and Fisheries Act 1953</p>
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1987, No. 197

An Act to fund the activities of United Wheatgrowers (N.Z.) Limited by imposing a levy on the producers of wheat grown in New Zealand [16 December 1987]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Wheat Producers Levy Act 1987.

(2) This Act shall come into force on the 1st day of January 1988.

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

“Feed manufacturer” means a person whose business or part of whose business is the processing of grain for the production of stock food:

“Grain merchant” means a person whose business or part of whose business is the buying and selling of wheat and who purchases more than 30 tonnes of wheat in any year:

“Purchaser of wheat” means a person (other than a flourmiller, grain merchant, or feed manufacturer) who purchases more than 30 tonnes of wheat in any year:

“United Wheatgrowers” means United Wheatgrowers (N.Z.) Limited, a company formed and registered under the Companies Act 1933.

3. Levy for United Wheatgrowers (N.Z.) Limited—

(1) Subject to the provisions of this Act, a levy calculated in accordance with section 4 of this Act is imposed on, and shall be payable by, the producers of any wheat grown in New Zealand and sold or delivered to a flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat.

(2) No levy shall be payable, under subsection (1) of this section, in respect of any wheat that is sold or delivered to any person (being a flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat) if that wheat is subsequently rejected by that person and is returned to, or disposed of at the direction of, the producer of the wheat.

4. Determination of rate of levy—(1) Subject to subsections (2) and (3) of this section, the levy imposed by section 3 of this Act shall be at such rate as may from time to time be determined by United Wheatgrowers.

(2) No rate of levy shall be determined by United Wheatgrowers under this section except on the recommendation of the Electoral Committee of that company, and any such recommendation may be made only if it is supported by at least 75 percent of the persons present and voting at the meeting of the Electoral Committee at which the recommendation is considered.

(3) The amount of the levy imposed by section 3 of this Act shall not exceed \$7.50 for every tonne of wheat sold or delivered by the producer to any flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat.

(4) The levy imposed by section 3 of this Act shall be computed by reference to the quantity of wheat sold or delivered by the producer to any grain merchant, flourmiller, feed manufacturer, or other purchaser of wheat.

5. Notification of rate of levy—(1) The rate of levy determined in accordance with section 4 of this Act shall be published in the *Gazette* at least 28 days before the date on which it is to come into force.

(2) Any notice under this section may be in like manner amended or revoked at any time.

(3) Where an amendment alters the rate of the levy imposed by section 3 of this Act, the notice effecting the amendment shall be published in the *Gazette* at least 28 days before the date on which the amendment comes into force.

6. Recovery and collection of levy—(1) All levies imposed by section 3 of this Act shall be recoverable in any Court of competent jurisdiction as a debt due to United Wheatgrowers.

(2) Every person (being a flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat) who buys from a producer any wheat in respect of which a levy is payable under section 3 of this Act shall, when making payment to the producer for the wheat, deduct from that payment the levy payable in respect of that wheat by the producer, and shall from time to time, as required by United Wheatgrowers, pay the proceeds of the levy to United Wheatgrowers.

7. Liability of producer to cease when levy deducted from purchase price—Where, pursuant to section 6 (2) of this Act, any flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat deducts, from any payment made to any producer of wheat, the amount of the levy payable, under section 3 of this Act, by that producer in respect of any wheat, that producer shall cease to be liable for the payment of that levy in respect of that wheat, notwithstanding that the flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat—

- (a) Fails to account to United Wheatgrowers for that levy; or
- (b) Is unable to pay that levy to United Wheatgrowers, whether on account of insolvency or for any other reason.

8. United Wheatgrowers to supply information relating to total amount of levy received—United Wheatgrowers shall, on the request of any person, inform that person, free of charge, of the total amount of the levy imposed by section 3 of this Act that has been paid to United Wheatgrowers pursuant to section 6 (2) of this Act during such month or months as are specified in the request.

9. Invoice to be issued—(1) Subject to subsection (3) of this section, where, pursuant to section 6 (2) of this Act, any person (being a flourmiller, grain merchant, feed manufacturer, or

other purchaser of wheat) deducts, from any payment made to any producer of wheat, the amount of the levy payable, under section 3 of this Act, by that producer in respect of any wheat, that person shall, on making that payment, provide that producer with an invoice containing the following particulars:

- (a) The name and address of that person:
- (b) The name and address of the producer to whom the invoice is issued:
- (c) The date on which the invoice is issued:
- (d) The quantity of wheat to which the payment relates:
- (e) The total amount of the levy deducted by that person from that payment.

(2) Every person who issues any invoice required to be issued by subsection (1) of this section shall retain a copy of that invoice for a period of not less than 2 years.

(3) An invoice is not required to be issued under subsection (1) of this section if the information required to be included in any such invoice is included in a goods and services tax invoice supplied to the producer of the wheat by the grain merchant, flourmiller, feed manufacturer, or other purchaser of wheat to whom the wheat is sold or delivered.

10. Collection fee—(1) Every person (being a flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat) who collects levies under section 6 (2) of this Act may deduct from any levies collected by that person a collection fee of such amount as may be agreed between that person and United Wheatgrowers.

(2) Where United Wheatgrowers and any person (being a flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat) are unable to agree on the amount of the collection fee that may be deducted from the levies collected by that person, the amount of the collection fee shall be determined by the Minister of Agriculture.

(3) No collection fee agreed under subsection (1) of this section or determined under subsection (2) of this section shall exceed an amount equal to 5 percent of any levy collected.

11. Particulars of levy—(1) Every payment to United Wheatgrowers of the amount of any levies in accordance with section 6 (2) of this Act shall be accompanied by a statement that specifies, in relation to the wheat in respect of which the levies comprised in the payment were collected, the district or districts in which that wheat was grown, with the amount (in

tonnes) of each cultivar of that wheat separately identified for each such district.

(2) United Wheatgrowers shall, on the request of any person, make available to that person, free of charge, any information contained in any statement supplied to United Wheatgrowers pursuant to subsection (1) of this section.

12. Trust in relation to levy—Notwithstanding any rule of law to the contrary, but subject to section 10 of this Act, the amount of any levy collected or purported to have been collected by any flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat under subsection (2) of section 6 of this Act shall be deemed to be money held in trust for United Wheatgrowers by that flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat, as the case may require, until that amount has been paid to United Wheatgrowers pursuant to that subsection.

13. Expenditure of levy—(1) The money received by United Wheatgrowers in respect of the levy imposed by section 3 of this Act may be expended by that company for the promotion, development, and improvement of the wheat growing industry.

(2) Without limiting the general power conferred by subsection (1) of this section, any such money may be expended by United Wheatgrowers for all or any of the following purposes:

- (a) Funding the Dominion Office of Federated Farmers of New Zealand Incorporated:
- (b) Entering into insurance contracts to protect wheatgrowers against loss or damage to crops:
- (c) Promoting and conducting research and other scientific work in connection with the wheat growing industry:
- (d) The payment of any other expenditure incurred by United Wheatgrowers in the performance of its functions:
- (e) Such other purposes in furtherance of the interests of wheatgrowers as United Wheatgrowers thinks fit.

(3) Nothing in subsection (2) (d) or (e) of this section authorises United Wheatgrowers to fund any commercial wheat-trading activity (whether that activity is carried out by United Wheatgrowers or by any other person) out of money received by United Wheatgrowers in respect of the levy imposed by section 3 of this Act.

14. Power to inspect books and obtain information—

(1) Subject to subsection (3) of this section, for the purposes of ensuring that any levy imposed by section 3 of this Act is collected, any person (being a person who is qualified for appointment as auditor of a company under the Companies Act 1955) specifically or generally authorised in writing in that behalf by the Minister of Agriculture may, from time to time, at the request of United Wheatgrowers,—

(a) Require any flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat to produce for inspection, within such reasonable period as the authorised person may specify, any book, record, contract, account, invoice, note, or other document in the possession or under the control of that flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat, and may take copies of or extracts from any such book, record, contract, account, invoice, note, or other document:

(b) Require any flourmiller, grain merchant, feed manufacturer, or other purchaser of wheat to furnish, within such reasonable period as the authorised person may specify, any information or particulars relevant to the collection of any levy payable under section 3 of this Act.

(2) Every authorisation given under subsection (1) of this section shall contain—

(a) A reference to this section; and

(b) The full name of the authorised person; and

(c) A statement of the powers conferred on the authorised person by subsection (1) of this section.

(3) No person shall be required, pursuant to any provision of subsection (1) of this section, to produce any book, record, contract, account, invoice, note, or other document, or to furnish any information or particulars, if the production of that book, record, contract, account, invoice, note, or other document, or the furnishing of that information or those particulars, as the case may require, would or could tend to incriminate that person, and that person shall be informed of that right before any person exercises the power conferred by any of the provisions of subsection (1) of this section to require the production of any book, record, contract, account, invoice, note, or other document, or the furnishing of any information or particulars.

(4) Where, at the request of United Wheatgrowers, any person authorised to do so exercises any of the powers

conferred by paragraph (a) or paragraph (b) of subsection (1) of this section, the expenses incurred by that person in exercising any such power shall be met by United Wheatgrowers.

15. Report on exercise of powers to inspect books and obtain information—Where any person authorised to do so exercises any of the powers conferred by paragraph (a) or paragraph (b) of section 14 (1) of this Act, that person shall, as soon as practicable, make a report to the Director-General of Agriculture and Fisheries on the exercise of that power.

16. Disclosure of information obtained pursuant to power to inspect books and obtain information—(1) Except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no person who exercises any of the powers conferred by paragraph (a) or paragraph (b) of section 14 (1) of this Act shall disclose to any other person (other than the Director-General of Agriculture and Fisheries or any person authorised in that behalf by the Director-General) any information obtained by that person as a result of the exercise of any such power.

(2) Notwithstanding anything in subsection (1) of this section, the provisions of the Official Information Act 1982 shall apply in respect of any information that is held by the Ministry of Agriculture and Fisheries and that was obtained pursuant to section 14 (1) of this Act.

17. Offences—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who—

- (a) Fraudulently avoids or attempts to avoid paying any levy payable by that person under section 3 of this Act; or
- (b) Refuses or fails, without reasonable excuse, to collect any levy required to be collected by that person under section 6 of this Act; or
- (c) Subject to section 10 of this Act, being a person who is required by section 6 of this Act to collect any levy, refuses or fails, without reasonable excuse, to pay to United Wheatgrowers, when required to do so by United Wheatgrowers, the amount of any levy so collected; or
- (d) Being a person who is required by section 9 of this Act to issue an invoice to any other person,—
 - (i) Fails to issue an invoice when so required; or

- (ii) Issues any invoice required by that section that to that person's knowledge is in any material aspect erroneous or incomplete; or
 - (iii) Fails to retain for a period of not less than 2 years a copy of any invoice issued by that person in accordance with that section; or
 - (e) Refuses or fails, without reasonable excuse, to submit any statement required to be submitted by that person by section 11 (1) of this Act; or
 - (f) Submits any statement under section 11 (1) of this Act that to that person's knowledge is false or misleading in a material particular; or
 - (g) Makes any statement knowing that it is both incorrect and material in any information or particulars furnished (whether in writing or not) under section 14 of this Act; or
 - (h) Knowingly makes any material omission from any information or particulars so furnished; or
 - (i) Refuses or fails, without reasonable excuse, to comply with any requirement made under paragraph (a) or paragraph (b) of section 14 (1) of this Act; or
 - (j) Contravenes section 16 (1) of this Act.
- (2) Any offence against this section committed by any employee or agent in the course of employment or agency shall be deemed to have been also committed by the employee's or agent's employer or principal if it is proved that the act or omission constituting the offence occurred with that employer's or principal's authority, permission, or consent.

18. Amendment to Ministry of Agriculture and Fisheries Act 1953—The Schedule to the Ministry of Agriculture and Fisheries Act 1953 (as substituted by section 4 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972) is hereby amended by inserting, in its appropriate alphabetical order, the item "The Wheat Producers Levy Act 1987".