

HORTICULTURE LEVY ACTS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Berryfruit Levy Act 1967, the Orchard Levy Act 1953, and the Vegetables Levy Act 1957; and is intended to be split into 3 separate Bills during its passage.

Clause 1 relates to the Bill's Short Title.

Berryfruit Levy

Clause 3 substitutes for the present definition of the term "garden" in the principal Act a redrafted definition of the term, and a new definition of the term "glasshouse". The old definition of "garden" depended on the area of land concerned, which had to be at least 250 m². The new definitions provide that a glasshouse or shadehouse where more than 2000 strawberry plants are grown is also a "garden", thus taking account of the fact that developments in growing technology now make it possible to grow strawberries in commercial quantities in areas of less than 250 m².

The opportunity has been taken to tidy up some existing definitions.

Orchard Levy

Clause 5 replaces section 3 of the principal Act with 2 new sections. At present the occupiers of an orchard (which as defined must have an area of at least 4000 m²) must pay an annual levy (of not more than \$400 but not less than a minimum amount, of not more than \$50, fixed by the Minister of Agriculture) calculated at the rate of \$10 per hectare of the area of all the orchards the occupier owns.

The new sections empower the Minister, after consulting the New Zealand Fruitgrowers Federation, to fix a maximum levy (of not more than \$1,200), a minimum levy (of not more than \$120), and a rate per hectare (of not more than \$30); and require occupiers to pay a levy calculated accordingly.

Vegetables Levy

Clause 7 amends the definition of the term "Minister" in the principal Act, to take account of the fact that there is no longer a Minister of Agriculture and Fisheries; and makes a minor drafting amendment to the definition of the term "vegetable grower".

No. 117—1

Price
incl. GST \$2.00

Clause 8 increases from .375% of the sale price to 1% of the sale price the maximum amount of the levy payable under the principal Act in respect of vegetables sold commercially otherwise than for processing or canning.

The maximum levy is prescribed in section 3 of the principal Act; and because that section has been amended on a number of different occasions, the opportunity has been taken to repeal and re-enact it. Except for the increase in the maximum levy and a minor drafting amendment to subsection (10) (which relates to offences), the section is unaltered. But its re-enactment enables the repeal of 4 Vegetables Levy Amendment Acts.

Hon. Colin Moyle

HORTICULTURE LEVY ACTS AMENDMENT

ANALYSIS

Title	2A. Minister may set maximum and minimum amount, and rate, of levy
1. Short Title	3. Occupiers of orchards to pay levy
<i>Berryfruit Levy</i>	<i>Vegetables Levy</i>
2. Sections to be read with Berryfruit Levy Act 1967	6. Sections to be read with Vegetables Levy Act 1957
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<i>Orchard Levy</i>	8. Levy payable in respect of vegetables
4. Sections to be read with Orchard Levy Act 1953	
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A BILL INTITULED

An Act to amend the Berryfruit Levy Act 1967, the Orchard Levy Act 1953, and the Vegetables Levy Act 1957

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

1. **Short Title**—This Act may be cited as the Horticulture Levy Acts Amendment Act 1988.

Berryfruit Levy

10 2. **Sections to be read with Berryfruit Levy Act 1967**— This section and section 3 of this Act shall be read together with and deemed part of the Berryfruit Levy Act 1967* (in that section referred to as the principal Act).

15 3. **Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “garden” (as amended by section 2 of the Berryfruit Levy Amendment Act 1974), and substituting the following definitions:

*R.S. Vol. 18, p. 11

“‘Garden’ means—

“(a) Any land that is used wholly or principally for growing berryfruit and has, or comprises areas of land that have in the aggregate, an area of 250 m² or more; and 5

“(b) Any glasshouse or glasshouses used for growing 2000 or more strawberry plants in the aggregate:

“‘Glasshouse’ includes shadehouse.”

(2) The said section 2 (1) is hereby further amended by 10
repealing the definitions of the terms “Department”, “Director-General”, “Minister”, and “relevant date”, and substituting, respectively, the following definitions:

“‘Department’ means the Ministry of Agriculture and Fisheries: 15

“‘Director-General’ means the Director-General of Agriculture and Fisheries:

“‘Minister’ means the Minister of Agriculture:

“‘Relevant date’, in relation to any year, means the 1st 20
day of October in that year.”

(3) The Berryfruit Levy Amendment Act 1974 is hereby consequentially repealed.

Orchard Levy

4. Sections to be read with Orchard Levy Act 1953—

This section and section 5 of this Act shall be read together with 25
and deemed part of the Orchard Levy Act 1953* (in that section referred to as the principal Act).

5. New sections substituted—(1) The principal Act is hereby amended by repealing section 3 (as substituted by section 3 (1) of the Orchard Levy Amendment Act 1985), and 30
substituting the following sections:

“2A. Minister may set maximum and minimum amount, and rate, of levy—(1) Subject to subsection (2) of this section, the Minister may from time to time, by notice in the *Gazette*, fix— 35

“(a) A maximum amount for the levy payable under section 3 of this Act (being an amount of not more than \$1,200); and

“(b) A minimum amount for that levy (being an amount of at least \$120); and 40

*R.S. Vol. 10, p. 533

Amendments: 1982, No. 111; 1985, No. 3; 1987, No. 42

“(c) A rate (being a rate of not more than \$30 per hectare) for the calculation of that levy.

“(2) The Minister shall not fix any amounts and rate under subsection (1) without first having—

5 “(a) Asked the Federation to recommend amounts and a levy; and

“(b) Considered any recommendation made by the Federation within a reasonable time of its being asked.

10 “3. **Occupiers of orchards to pay levy**—(1) In this section,—

15 “‘Calculated amount’, in relation to any person who, on the 31st day of January in any year, was the occupier of an orchard, means an amount calculated at the rate (per hectare of the aggregate area of all orchards of which the person was occupier on that day) that was in force under section 2A (1) (c) of this Act on that day:

20 “‘Maximum amount’, in relation to the 31st day of January in any year, means the amount that was in force under section 2A (1) (a) of this Act on that day:

“‘Minimum amount’, in relation to the 31st day of January in any year, means the amount that was in force under section 2A (1) (b) of this Act on that day.

25 “(2) Every person who on the 31st day of January in any year is the occupier of an orchard shall pay to the Federation in the month of March in that year a levy calculated in accordance with subsection (3) of this section.

30 “(3) The following provisions shall apply to the calculation of the levy in respect of the occupier of any orchard:

“(a) If the calculated amount for the aggregate area of all the occupier’s orchards is more than the maximum amount, the levy payable is the maximum amount:

35 “(b) If the calculated amount for the aggregate area of all the occupier’s orchards is less than the minimum amount, the levy payable is the minimum amount:

“(c) In every other case, the calculated amount for the aggregate area of all the occupier’s orchards is the levy payable.”

40 (2) Section 3 of the Orchard Levy Amendment Act 1985 is hereby consequentially repealed.

Vegetables Levy

6. Sections to be read with Vegetables Levy Act 1957— This section and sections 7 and 8 of this Act shall be read together with and deemed part of the Vegetables Levy Act 1957* (in those sections referred to as the principal Act). 5

7. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Minister”, and substituting the following definition:

“ ‘Minister’ means the Minister of Agriculture:”.

(2) The said section 2 (1) is hereby further amended by 10 inserting in the definition of the term “vegetable grower”, before the word “means”, the words “or ‘grower’ ”.

8. Levy payable in respect of vegetables—(1) The principal Act is hereby amended by repealing section 3, and substituting the following section: 15

“3. (1) Every auctioneer or wholesaler who sells any vegetables on behalf of a grower, and every person who purchases vegetables from a grower for the purpose of processing, canning, or resale otherwise than by retail, shall deduct from the amount due to the grower in respect of the sale or purchase the amount of the levy determined in accordance with this section. 20

“(2) For the purposes of this section, any vegetables supplied to or grown by a person who proposes to subject them to any manufacturing process before sale shall be deemed to be purchased by that person and, in the absence of a contract of sale, the amount of the levy payable under this section in any such case shall be assessed as if the price payable for the vegetables were the price that the purchaser might reasonably have expected to pay if the purchaser had bought the vegetables for processing purposes in the same locality at the same time. 25 30

“(3) The date of the sale of any vegetables in respect of which a levy is payable under subsection (2) of this section shall be deemed to be the date when they are received for processing by the person by whom the levy is payable. 35

“(3A) Every vegetable grower who sells any vegetables to any retailer of vegetables, or who exports any vegetables from New Zealand, shall, unless a levy has been deducted under subsection (1) of this section in respect of the vegetables, furnish to the Federation in respect of each year ending with the 30th day of 40

June or any other date as approved by the Federation in any particular case a written declaration, in a form the Federation requires or accepts, stating—

- “(a) In the case of sales of vegetables to retailers, the gross returns from the sales; and
- 5 “(b) In the case of vegetables exported, the total returns to the grower at f.o.b. prices.
- “(3B) In respect of the sales and exports referred to in **subsection (3A)** of this section a levy shall be payable by the grower to the Federation at the appropriate rate determined
- 10 pursuant to **subsection (4)** of this section.
- “(3c) Every declaration under **subsection (3A)** of this section shall be furnished not later than 3 months after the close of the year to which it relates and shall—
- “(a) Be accompanied by the amount of the levy determined
- 15 in accordance with this section; and
- “(b) Bear a certificate of a person who is a chartered accountant in public practice to the effect that to the best of the person’s knowledge and belief after having checked the records and accounts of the vegetable grower to whatever extent the person has
- 20 thought necessary, the declaration is correct and in accordance with **subsection (3A)** of this section.
- “(4) Subject to **subsection (4A)** of this section, the levy shall be at a rate from time to time determined by the Minister on the
- 25 recommendation of the Federation.
- “(4A) Where vegetables are purchased from a vegetable grower for the purpose of processing or canning, the rate of levy shall not exceed 1 percent of the price at which the vegetables are purchased; and in any other case, the rate of
- 30 levy shall not exceed 1 percent of the price at which the vegetables concerned are sold by or on behalf of the grower.
- “(5) The rate of levy may apply to all vegetables or may vary in respect of different vegetables or classes of vegetables or may vary according to whether the vegetables are sold by an
- 35 auctioneer or otherwise, or both.
- “(6) The levy shall be payable in respect of vegetables sold on and after the first day of the month next following the date of publication in the *Gazette* of the determination fixing the rate of the levy.
- 40 “(7) The rate of levy determined in accordance with this section shall be notified in the *Gazette* at least 14 days before the day when the levy is to take effect.
- “(8) Subject to **subsection (8AA)** of this section, any amount deducted under **subsection (1)** of this section shall be paid to the

Federation within 3 months after the date of the sale in respect of which the deduction was made.

“(8AA) There may be retained by the person making any deduction under **subsection (1)** of this section commission at a rate from time to time prescribed by the Minister by notice in 5 the *Gazette*.

“(8A) Notwithstanding any rule of law to the contrary, but subject to **subsection (8AA)** of this section, the amount of any levy collected or purported to have been collected by any wholesaler, auctioneer, or processor pursuant to this section 10 shall be deemed to be money held in trust for the Federation by the wholesaler, auctioneer, or processor, until it has been paid to the Federation pursuant to **subsection (8)** of this section.

“(9) All levies imposed under this section shall be recoverable in any Court of competent jurisdiction as a debt due to the 15 Federation.

“(9A) For the purposes of this section the term ‘retailer of vegetables’ includes any person who or organisation that, for payment or reward, provides meals or light refreshments or provides services that include the provision of meals or light 20 refreshments but does not include any person who purchases vegetables for the use of the person or the person’s family.

“(10) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$200 who—

“(a) Acts in contravention of or fails to comply in any respect 25 with **subsection (1)**, **subsection (3A)**, **subsection (3c)**, or **subsection (8)** of this section; or

“(b) Knowingly furnishes or gives any declaration or certificate for the purposes of this section that is false or misleading in a material respect.” 30

(2) The following enactments are hereby consequentially repealed:

- (a) The Vegetables Levy Amendment Act 1960:
- (b) The Vegetables Levy Amendment Act 1972:
- (c) The Vegetables Levy Amendment Act 1975: 35
- (d) Section 2 of the Vegetables Levy Amendment Act 1978:
- (e) The Vegetables Levy Amendment Act 1980.