



COMMODITY LEVIES (WINEMAKING GRAPES) ORDER 1998

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 16th day of November 1998

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, and on the recommendation of the Minister for Food, Fibre, Biosecurity and Border Control (being satisfied as to the matters required by section 5 of that Act), makes the following order.

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ORDER

1. Title and commencement—(1) This order may be cited as the Commodity Levies (Winemaking Grapes) Order 1998.

(2) This order comes into force on 22 December 1998.

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

“Buyer” means a person who buys product from a grower; and, in relation to any product bought from a grower, means the person who bought them or it:

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

“Farm-gate price”, in relation to any grapes sold in New Zealand by or on behalf of their grower, means the price paid to their grower for them:

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

“Grape juice” and “grape juice concentrate” mean, respectively, the juice of grapes and grape juice that has been concentrated by the removal of water from it:

“Grapes” means grapes of the genus *Vitis* grown in New Zealand and intended to be used to make wine (directly, or after the manufacture of grape juice or grape juice concentrate from them) or grape juice:

“Grower” means a person whose business is or includes the growing of grapes for sale or for the production of grape juice or grape juice concentrate for sale; and,—

(a) In relation to any grapes, means their grower at the time of their harvest; and

(b) In relation to any grape juice or grape juice concentrate, means the grower of the grapes from which it was made:

“Levy” means the levy imposed by clause 3:

“Levy money” means money paid under this order as levy; and includes any goods and services tax payable on it:

“Levy year” means a period of 12 months beginning on 1 July and ending with the following 30 June, and—

(a) Includes the period commencing on the commencement of this order and ending with 30 June 1999; but

(b) Does not include the period commencing on 1 July 2004 and ending with the expiry of this order:

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

“*The New Zealand Winegrower*”,—

(a) Subject to paragraph (b), 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) If that publication has ceased to be published, means a publication for the time being specified for the purposes of this order by the Minister by notice in the *Gazette*:

“Notional price” means the price referred to in clause 4:

“Product” means grapes, grape juice, or grape juice concentrate.

3. Levy imposed—(1) There is imposed on the commodity specified in subclause (2) a levy payable to the industry organisation specified in subclause (3).

(2) The commodity on which the levy is imposed is grapes grown in New Zealand for sale or export.

(3) The industry organisation to which the levy is payable is the council.

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

(a) In the case of grapes processed into grape juice or grape juice concentrate before sale, on the basis of a notional price determined by the council under subclause (2) or subclause (3):

(b) In the case of grapes exported from New Zealand by or on behalf of their grower, on the basis of their f.o.b. value (exclusive of GST, if any, and before deduction of any costs or charges):

(c) In the case of grapes sold in New Zealand, on the basis of their farm-gate price (exclusive of GST, if any, and before deduction of any costs or charges).

(2) The notional price of grapes (exclusive of GST, if any, and before deduction of any costs or charges) processed into grape juice or grape juice concentrate in any levy year after the levy year ending with 30 June 1999 must be fixed by the council at its annual general meeting in that levy year, and notified in the *Gazette* and *The New Zealand Winegrower*.

(3) The notional price of grapes (exclusive of GST, if any, and before deduction of any costs or charges) processed into grape juice or grape juice concentrate by any grower in the levy year ending with 30 June 1999 must be determined by the executive committee of the council by any means by which it can lawfully make decisions.

(4) The notional price of grapes processed into grape juice or grape juice concentrate by any grower is the price that, in the council’s opinion, the grower would receive for them if, immediately before they were processed into that product, the grower had sold them to a similar processor situated in the same locality (whether or not there was then in fact a similar processor situated in the same locality).

(5) The council may fix different notional prices for different varieties and species of grapes.

5. Growers primarily responsible for payment of levy—The grower is primarily responsible for paying the levy on grapes.

6. Person responsible for payment of levy—(1) If product is sold in New Zealand by the grower, the buyer must pay to the council an amount equal to the levy on it (plus GST, if any).

(2) If the product is exported from New Zealand by the grower, the grower must pay the levy (plus GST, if any) to the council.

7. Recovery of levy—A buyer of product from a grower who pays an amount to the council in respect of the levy due for payment on that product may deduct from any money payable to the grower by the buyer an amount equal to the amount paid (plus GST, if any).

8. No collection or recovery fee to be charged—No buyer may charge a collection or recovery fee for paying the levy or recovering it from a grower.

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

10. Maximum rate of levy—The maximum rate of the levy is 1.5% of the farm-gate price, notional price, or f.o.b. value, (exclusive of GST, if any).

11. Council to fix actual rate of levy—(1) The council must, at its annual general meeting in each levy year, determine the actual rate of the levy for a levy year, before 31 December in that levy year.

(2) Despite subclause (1), the council may fix the actual rate of levy for the levy year ending with 30 June 1999 by any means by which it may lawfully make decisions.

12. Previous rate to apply where new rate not fixed in time—Despite clause 11 (1), if the council has not set the actual rate of the levy for a levy year before 31 December in that levy year, the actual rate of the levy for that levy year must be the actual rate of the levy most recently fixed by the council for a previous levy year.

13. Notification of rate of levy—As soon as practicable after fixing a rate of levy for a levy year, the council must notify the rate of the levy for the levy year—

- (a) By notice in *The New Zealand Winegrower*; and
- (b) By notice in the *Gazette*; and
- (c) By notice in 1 or more major metropolitan daily circulating newspapers.

14. Time for payment of levy—(1) The due date for the payment of any amount of levy money payable to the council on product under this order (plus GST, if any),—

- (a) In the case of product bought in New Zealand from a grower, is the first occasion after harvest of the grapes concerned that the buyer is liable to pay the grower for the product;
- (b) In the case of product exported by the grower, is the date on which the grower is entitled to payment for it.

(2) The latest date for payment of any amount of levy money payable to the council in respect of product (plus GST, if any) is the 20th day of the month following the month in which the due date for its payment falls.

15. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the payment to the council of an

amount of levy money may pay the amount concerned to the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Commodity Levies Act 1990; and, in that case, the chief executive must cause it to be paid to the council.

16. Levy money to be spent by council—(1) Subject to subclause (2), the council must spend or (pending its expenditure) invest all levy money paid to it.

(2) The council may pay any amount of levy money to any of its regional associations, which may spend it or (pending its expenditure) invest it.

17. Consultation on how levy money to be spent—(1) At least every 12 months, the council must consult growers on how levy money is proposed to be spent and provide details as to the previous 12 months' expenditure.

(2) For the purposes of subclause (1), the council must—

(a) Communicate with growers by means of—

(i) Regular newsletters to growers whose postal address the council has; and

(ii) Advertisement in *The New Zealand Winegrower*; and

(iii) The technical symposium at the Romeo Bragato Conference; and

(iv) Any other manner the council thinks fit; and

(b) Invite requests for annual research and other expenditure priorities; and

(c) Invite and provide for grower representation on the committee allocating research funding in accordance with the council's constitution and rules; and

(d) Send to growers, whose postal address it has, written invitations to attend the council's annual general meeting and any special general meetings held for the purposes of subclause (1); and

(e) Circulate before the council's annual general meeting a draft budget and plan for the spending of levy money in the next year; and

(f) Present the final proposed expenditure for approval at the council's annual general meeting.

18. Confidentiality of information—(1) Subject to subclause (2), no person involved in managing, or employed by the management of, the council may disclose (otherwise than to some other person who is involved in managing, or employed by the management of, the council) any 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 that Act; 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) prevents the council from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(4) Nothing in subclause (1) prevents the disclosure to, and use of any information by, a returning officer or person or body engaged in the election of members or officeholders of the council to determine the voting entitlements and to count the votes of members of the council.

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

19. Returns—Every grower or buyer must, as soon as is reasonably practicable after receiving the council's written request for the grower or buyer to do so, give the council written notice of any information the council needs to enable it to calculate any amount of levy under clause 4.

20. Records to be retained by buyer—A buyer of any quantity of product from a grower must keep, and retain for 2 years, after the end of the levy year in which the product was brought, the following particulars in respect of the product:

- (a) The quantity;
- (b) The variety;
- (c) The name of the grower;
- (d) The price paid;
- (e) The amount of the levy;
- (f) The date the levy was paid.

21. Records to be retained by grower—The grower of any quantity of grapes must keep, and retain for 2 years after the end of each levy year, the following particulars relating to each sale of product in that levy year:

- (a) The quantity;
- (b) The variety;
- (c) The name of the buyer;
- (d) The price received;
- (e) The amount of levy (if any) paid;
- (f) The date the levy (if any) was paid;
- (g) The quantity of grapes processed into grape juice or grape juice concentrate;
- (h) Copies of any declaration attached to or forming part of the customs entry in respect of the export of any product produced by the grower.

22. Records to be retained by council—The council must keep, and retain for 2 years after the end of the levy year in which it was invested or spent,—

- (a) Records of every amount of levy money paid to it (whether in that levy year or any earlier levy year) that has been invested or spent 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 money spent by it was spent.

Mediation

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 Institute of Chartered Accountants of New Zealand to appoint a person to 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 ends 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 1 or more findings in relation to it.

24. Remuneration of mediators—(1) Subject to subclause (2), a mediator must 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) must—

- (a) Fix an amount or several amounts to be paid to the mediator as remuneration; and
- (b) Specify the party by which each amount is to be paid.

(3) Each party must 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 by a mediator must 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, only the parties to a dispute and the mediator may 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—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.

31. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 30 may appeal to a District Court against the decision.

(2) The appeal must 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 must—

(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 does 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 is to be remunerated by the council at a rate determined by the Minister after consultation with the council.

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 on 22 December 1998, imposes on all grapes intended to be used in the production of wine or grape juice or grape juice concentrate a levy payable to the New Zealand Grape Growers Council Incorporated. It replaces the Commodity Levies (Winemaking Grapes) Order 1992, which expires on 21 December 1998.

Unless earlier revoked, this order will expire 6 years after it was made.

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

Date of notification in *Gazette*: 19 November 1998.

This order is administered in the Ministry of Agriculture and Forestry.