

# APPLE AND PEAR LEVY COLLECTION ACT 1976

**No. 196 of 1976**

An Act relating to the Collection of the Levy imposed by the *Apple and Pear Levy Act 1976*.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

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| Short title.                       | 1. This Act may be cited as the <i>Apple and Pear Levy Collection Act 1976</i> . <sup>1</sup>  |
| Commence-<br>ment.                 | 2. This Act shall come into operation on 1 January 1977.   |
| Definitions.                       | 3. In this Act, unless the contrary intention appears—<br>“levy” means the levy imposed by the <i>Apple and Pear Levy Act 1976</i> ;<br>“month” means a month of the year;<br>“Secretary” means the Secretary to the Department of Primary Industry.   |
| List of<br>quantity<br>purchasers. | 4. (1) The Secretary shall cause to be maintained, in accordance with this section, a list to be known as the List of Quantity Purchasers.<br><br>(2) The Secretary shall—<br>(a) cause to be entered in the List of Quantity Purchasers the name and business address of every person as to whom the Secretary is satisfied that he is or is about to become a quantity purchaser;<br>(b) cause the removal from the List of the name and business address of any person as to whom the Secretary is satisfied that he is not, and is not about to become, a quantity purchaser;<br>(c) cause to be made such alterations as appear to him to be necessary to addresses appearing in the List; and<br>(d) make such arrangements for publishing the List, and alterations to the List, as he thinks necessary or desirable for the purposes of this Act.<br><br>(3) A person who becomes, or in the ordinary course of business will become, a quantity purchaser shall, within 28 days after he becomes, or it appears that he will become, a quantity purchaser, as the case may be, give notice in writing to the Secretary of that fact.<br><br>Penalty: \$300. |

(4) Where a person whose name is included in the List of Quantity Purchasers has ceased to be a quantity purchaser, he shall, within 28 days after he ceases to be a quantity purchaser, give notice in writing to the Secretary of that fact.

Penalty: \$100.

5. (1) Subject to sub-section (2), the amount of levy on any fruit is payable upon the expiration of 28 days after the last day of the month in which the fruit was sold by the grower or used by the grower in the production of fruit juice or other goods, as the case may be. Due date for payment.

(2) The amount of levy on any fruit sold by the grower by retail sale is payable on 28 February of the year next following the year in which the fruit was sold by the grower.

6. (1) For better securing the payment of levy, a quantity purchaser or dealer who purchases fruit from the grower, or a dealer who sells fruit on behalf of the grower, is liable to pay to the Commonwealth an amount equal to any levy that becomes payable by the grower in respect of the fruit, and has not been paid, and may recover from the grower, by set-off or otherwise, any amount paid by, or recovered from, him in respect of that liability. Liability of quantity purchasers and dealers.

(2) A quantity purchaser or dealer may, for the purpose of meeting any liability under sub-section (1) in respect of the levy on fruit, retain so much of any moneys payable by him to the grower in respect of the fruit as does not exceed the amount of the liability.

(3) Where, under this section, an amount in respect of levy payable by a grower is paid to the Commonwealth by, or recovered by the Commonwealth from, a quantity purchaser or dealer, the grower is, to the extent of the amount so paid or recovered, discharged from his liability to pay the levy to the Commonwealth.

7. (1) Where the liability of the grower of any fruit to pay any amount of levy on the fruit is not discharged on or before the date when the levy is payable, there is payable to the Commonwealth by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 10 per centum per annum upon the amount of the levy from time to time remaining unpaid, to be computed from the date on which the levy became payable. Penalty for non-payment.

(2) A penalty under sub-section (1) is payable—

- (a) where the penalty relates to levy in respect of fruit sold by the grower to a quantity purchaser or dealer or fruit sold by a dealer on behalf of the grower—by the quantity purchaser or dealer; or
- (b) in any other case—by the grower.

(3) The Minister or, subject to sub-section (4), a person authorized in writing by the Minister to grant remissions under this sub-section may,

in a particular case, for reasons that the Minister or the person, as the case may be, in his discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(4) A remission granted under sub-section (3) by a person other than the Minister shall not exceed \$100.

Recovery of  
levy.

8. (1) The following amounts shall be deemed to be debts due to the Commonwealth:—

- (a) an amount of levy that is payable;
- (b) an amount payable under sub-section 6 (1); and
- (c) an amount payable by way of penalty under section 7.

(2) In proceedings for the recovery of an amount referred to in paragraph (1) (a) or (b), a statement or averment in the complaint, claim or declaration of the plaintiff is *prima facie* evidence of the matter so stated or averred.

Offences.

9. (1) A person shall not—

- (a) fail or neglect duly to comply with a requirement of the regulations relating to the submitting of returns and information;
- (b) give, under sub-section 4 (3) or (4), information that is false in a material particular; or
- (c) falsely represent himself to be, or not to be, a quantity purchaser or a dealer.

Penalty: \$300.

(2) A prosecution for an offence against this section may be commenced at any time.

Access to  
premises,  
books, &c.

10. (1) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

(2) Where an authorized person has reason to believe that—

- (a) there is, on any premises, fruit on which levy is, or may become, payable; or
- (b) there are, on any premises, books, documents or papers relating to fruit on which levy is, or may become, payable,

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purposes of exercising the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied by information on oath or affirmation—

- (a) that there is reasonable ground for believing that—
  - (i) there is on the premises to which the application relates fruit on which levy is, or may become, payable; or

- (ii) there are on the premises to which the application relates books, documents or papers relating to fruit on which levy is, or may become, payable; and

- (b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant authorizing the authorized person, with such assistance as he thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), he may exercise the functions of an authorized person under this section.

(5) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of the warrant granted under sub-section (3) or in pursuance of sub-section (4).

Penalty: \$200.

(6) A reference in this section to an authorized person shall be read as a reference to—

- (a) a person appointed by the Minister, in writing, to be an authorized person for the purposes of this section; or
- (b) a person included in a class of persons appointed by the Minister, in writing, to be authorized persons for the purposes of this section.

(7) The functions of an authorized person under this section are—

- (a) in relation to premises on which the person has reason to believe there is fruit on which levy is, or may become, payable, to enter those premises and search for, examine, weigh and count any apples or pears on those premises; and
- (b) in relation to premises on which the person has reason to believe there are books, documents or papers of the kind referred to in paragraph (2) (b)—to search for, inspect, take extracts from and make copies of any such books, documents or papers.

11. (1) Where fruit is sold by the grower to a quantity purchaser or dealer for a particular use in Australia (including fruit sold by a dealer on behalf of a grower) and the fruit is put to another use in Australia, the fruit shall, if the Secretary so directs, be deemed to have been sold by the grower for that other use.

Fruit used for purpose other than that for which it is sold.

(2) The Minister or, subject to sub-section (3), a person authorized in writing by the Minister to grant remissions under this sub-section, may, in a particular case, for reasons that the Minister or the person, as the case may be, in his discretion thinks sufficient, remit the whole or a

part of any additional levy that, but for the exercise by the Secretary of his powers under sub-section (1), would not be payable.

(3) A remission granted under sub-section (2) by a person other than the Minister shall not exceed \$100.

**Delegation.**

**12.** (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer performing duties in the Department of Primary Industry any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall for the purposes of this Act, be deemed to have been exercised by the Secretary.

(3) A delegation under this section does not prevent the exercise of a power by the Secretary.

**Regulations.**

**13.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act or for facilitating the collection or recovery of amounts of levy or other moneys payable to the Commonwealth under this Act and, in particular—

- (a) providing for the manner of payment of levy and other money payable to the Commonwealth under this Act;
- (b) requiring persons to keep records relating to the production and use of, and sale of or other dealings in, apples and pears;
- (c) requiring persons to submit to such persons and authorities as are prescribed returns or information relating to the production and use of, and sale of or other dealings in, apples and pears;
- (d) prescribing the form of warrant for the purposes of section 10; and
- (e) prescribing penalties, not exceeding a fine of \$200, for offences against the regulations.

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**NOTE**

1. Act No. 196, 1976; assented to 20 December 1976.