**APPLE AND PEAR EXPORT CHARGE COLLECTION ACT 1976**

**No. 198 of 1976**

An Act relating to the collection of the Charge imposed by the *Apple and Pear Export Charge Act* 1976.

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

**Short title.**

**1.** This Act may be cited as the *Apple and Pear Export Charge Collection Act* 1976.

**Commencement.**

**2.** This Act shall come into operation on 1 January 1977.

**Definitions.**

**3.** In this Act, unless the contrary intention appears—

“charge” means the charge imposed by the *Apple and Pear Export Charge Act* 1976;

“month” means a month of the year.

**Due date for payment.**

**4.** The amount of the charge on fruit is payable upon the expiration of 28 days after the last day of the month in which the fruit was exported.

**Liability of exporting agents and other persons.**

**5.** (1) This section applies to fruit to which paragraph 6(2)(a) of the *Apple and Pear Export Charge Act* 1976 applies other than fruit that is owned by the grower of the fruit at the time it is exported and is exported by the grower otherwise than through another person.

(2) In this section, “exporter”, in relation to fruit to which this section applies, means—

(a) if the fruit is owned by the grower at the time it is exported but is exported on his behalf by another person—that other person; or

(b) if the fruit is not owned by the grower at the time it is exported—

(i) where it is exported by the owner of the fruit otherwise than through another person—the owner of the fruit; or

(ii) if another person (other than the grower) exports the fruit on behalf of the owner of the fruit—that other person.

(3) For better securing the payment of charge that is payable in respect of fruit to which this section applies, the exporter of the fruit is liable to pay to the Commonwealth an amount equal to any charge 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.

(4) The exporter may, for the purpose of meeting any liability under sub-section (3) in respect of the charge 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.

(5) Where, under this section, an amount in respect of charge payable by a grower is paid to the Commonwealth by, or recovered by the Commonwealth from, the exporter, the grower is, to the extent of the amount so paid or recovered, discharged from this liability to pay the charge to the Commonwealth.

**Penalty for non-payment.**

**6.** (1) Where the liability of a person to pay any charge is not discharged on or before the date when the charge is payable, there is payable to the Commonwealth by way of penalty, in addition to the amount of the charge, an amount calculated at the rate of 10 per centum per annum upon the amount of the charge from time to time remaining unpaid, to be computed from the date on which the charge became payable.

(2) A penalty under this section is payable—

(a) where the penalty relates to charge payable by the grower of fruit and section 5 does not apply to the fruit—by the grower;

(b) where the penalty relates to charge payable by the grower of fruit and an amount is payable by another person under section 5 in respect of the charge—by that other person; or

(c) in any other case—by the person by whom the charge is payable.

(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 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 charge.**

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

(a) an amount of charge that is due for payment;

(b) an amount payable under section 5; and

(c) an amount payable by way of penalty under section 6.

(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 relating to returns, &c.**

**8.** (1) A person shall not fail or neglect duly to comply with a requirement of the regulations relating to the submitting of returns and information.

Penalty: $300.

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

**Access to premises, books, &c.**

**9.** (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 in respect of which charge may become payable; or

(b) there are, on any premises, books, documents or papers relating to fruit in respect of which charge has, 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 in respect of which charge may become payable; or

(ii) there are on the premises to which the application relates any books, documents or papers relating to fruit in respect of which charge has, 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 Minster, 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 in respect of which charge 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.

**Payments in respect of levy on fruit liable to charge.**

**10.** (1) In this section, “levy” means levy imposed by the *Apple and Pear Levy Act* 1976.

(2) Where levy has been paid in respect of any fruit that is exported and, by virtue of sub-section 7(2) of the *Apple and Pear Levy Act* 1976, levy is not payable in respect of the fruit, the amount so paid shall, if it is not refunded to the person by whom it was paid, be deemed to be a payment of, or on account of, the charge imposed on the fruit.

(3) Where—

(a) an amount in respect of levy on any fruit has been paid by a person to the Commonwealth under sub-section 6(1) of the *Apple and Pear Levy Collection Act* 1976 and, by virtue of sub-section 7(2) of the *Apple and Pear Levy Act* 1976, levy is not payable in respect of the fruit; and

(b) an amount in respect of charge on the fruit is payable by the same person under section 5 of this Act,

the amount so paid by that person under sub-section 6(1) of the *Apple and Pear Levy Collection Act*1976 shall, if it is not refunded to the person, be deemed to be a payment of, or on account of, the amount payable by the person under section 5 of this Act.

**Regulations.**

**11.** 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 charge and other moneys payable to the Commonwealth under this Act;

(b) requiring persons to keep records relating to the production and export of, and 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 export of, and other dealings in, apples and pears;

(d) prescribing the form of warrant for the purposes of section 9; and

(e) prescribing penalties, not exceeding a fine of $200, for offences against the regulations.