



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p>2. Interpretation</p> <p>3. Act not to apply to certain growers</p> <p>4. Minister may prescribe rates of annual levy</p> <p>5. Annual levies payable by certain growers</p> <p>6. Expenditure of annual levies</p> <p>7. Special levy</p> <p>8. Objections to assessments</p> <p>9. Money recoverable as a debt</p> <p>10. Offences in respect of returns</p>	<p>11. Federation to comprise affiliated associations, etc.</p> <p>12. Membership of associations</p> <p>13. Annual accounts, etc.</p> <p>14. Auditors and auditing of accounts</p> <p>15. Copy of balance sheet to be sent to Minister and members</p> <p>16. Copy of rules, etc., to be submitted to Minister</p> <p>17. Offences by officers of the Federation and associations</p> <p>18. Giving of notice</p> <p>19. Act to be administered by Department of Agriculture Schedule</p>
--	--

1967, No. 47

An Act to authorise the levying of berryfruit growers to provide money for the promotion, development, and improvement of the berryfruit-growing industry

[15 November 1967]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Berryfruit Levy Act 1967.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Association” means any association (by whatever name it may be called) for the time being affiliated to the Federation and constituted to safeguard and promote the interests of those growers whose gardens are

situated in the area in respect of which the association is established and of such other persons as may be admitted to membership of the association under its rules:

“Berryfruit”, or “fruit”, means the kinds of fruit for the time being specified in the Schedule to this Act:

“Department” means the Department of Agriculture constituted under the Department of Agriculture Act 1953:

“Director-General” means the Director-General of Agriculture:

“Federation” means the New Zealand Berryfruit Growers’ Federation (Incorporated), a society incorporated under the Incorporated Societies Act 1908; and, where appropriate, includes the executive committee (by whatever name it may be called) of the Federation:

“Garden” means any area or areas of land, not being in the aggregate less than one-sixteenth of an acre, which is used wholly or principally for the purposes of growing berryfruit:

“Grower” means any person who owns or occupies a garden, and grows berryfruit there for the purposes of sale:

“Minister” means the Minister of Agriculture:

“Prescribed rate”, in relation to any annual levy, means the rate of annual levy for the time being prescribed by the Minister by notice in the *Gazette*:

“Relevant date”, in relation to the year nineteen hundred and sixty-seven, means the first day of December in that year, and in relation to any subsequent year, means the first day of October in that subsequent year:

“Sale”, in relation to any berryfruit, includes selling anything produced from the fruit, whether by manufacturing, processing, or otherwise; and “sells” has a corresponding meaning.

(2) The Governor-General may from time to time, by Order in Council, add to or omit from the Schedule to this Act the name of any kind of berryfruit, and every such Order in Council shall take effect according to its tenor.

3. Act not to apply to certain growers—Notwithstanding anything to the contrary in this Act, if, in the period commencing with the first day of December, nineteen hundred and sixty-seven, and ending with the thirtieth day of September, nineteen hundred and sixty-eight, or in any period of twelve months commencing with the first day of October in the year nineteen hundred and sixty-eight or any subsequent year, any person is required to pay to any marketing committee established under any regulations made under the Agriculture (Emergency Powers) Act 1934 and the Marketing Act 1936 for the purpose of regulating the marketing of raspberries in respect of any garden that is—

- (a) Owned or occupied by him; and
- (b) Situated in the South Island; and
- (c) Used in the production of raspberries for sale—

any portion of the proceeds from the sale of those raspberries, he shall not for or during that period be required to pay any annual or special levy or to comply with any other requirement of this Act in respect of any part of that garden used as aforesaid.

4. Minister may prescribe rates of annual levy—(1) Subject to the provisions of this Act, the Minister may from time to time, after having regard to the recommendations of the Federation on the matter, prescribe by notice in the *Gazette* the rates of annual levy to be paid by berryfruit growers in respect of their gardens to the Federation for the purposes of this Act. The rates so prescribed shall be based on the areas of gardens.

(2) No rate of more than one hundred dollars shall be payable in respect of any one garden.

(3) The rates of levy may apply to all berryfruit growing districts or to all classes of berryfruit or may vary in respect of different districts or different classes of fruit.

(4) The rates of levy shall be notified in the *Gazette* at least fourteen days before they are to come into force.

(5) The Minister may at any time vary or revoke any notice made under subsection (1) of this section.

5. Annual levies payable by certain growers—(1) An annual levy, the rate of which is for the time being prescribed by the Minister under section 4 of this Act, shall be payable to the Federation by every grower who, on the relevant date in any year, is carrying on the business of growing berryfruit for the purposes of sale.

(2) Before the relevant date in any year, the Federation shall supply to every grower who in the opinion of the Federation may be liable to pay an annual levy a form of return which shall include a list of the prescribed rates of annual levy.

(3) Within twenty-eight days after the relevant date in any year, or within such extended period as the Federation may allow, every grower shall lodge with the Federation a return (which may be in the form supplied to him under subsection (2) of this section or in such other form as may be acceptable to the Federation) declaring the area of his garden on that date. The return shall be accompanied by the amount of the appropriate annual levy.

(4) If the grower does not lodge with the Federation a return as required by subsection (3) of this section or if the Federation believes on reasonable grounds that the area declared in the return is incorrect, the Federation may estimate the area of the grower's garden and assess the levy payable in respect of it in accordance with the prescribed rates.

(5) On making an assessment under subsection (4) of this section, the Federation shall as soon as practicable notify the grower of its assessment and of the amount that he is required to pay to it by way of levy or additional levy, as the case may be.

(6) Within fourteen days of his being given notice under subsection (5) of this section, or within such extended period as the Federation may allow, the grower shall pay to the Federation the amount specified in the notice, unless he objects to the assessment, in which case he shall give notice of the objection to the Federation in accordance with section 8 of this Act.

(7) For the purposes of determining whether any person is liable to pay an annual levy, a person shall be deemed to be a grower who on the relevant date in any year is carrying on the business of growing berryfruit for the purposes of sale if—

- (a) He owns or occupies a garden and is growing berryfruit there on that relevant date; and
- (b) He sells any of the berryfruit at any time during the period commencing with that relevant date and ending on the relevant date in the next ensuing year.

6. Expenditure of annual levies—(1) The money received by the Federation from annual levies imposed under this Act shall be spent by the Federation for the promotion, development, and organisation of the berryfruit-growing industry.

(2) Subject to subsection (1) of this section, the money collected from annual levies may from time to time be spent by the Federation for all or any of the following purposes:

- (a) The investigation and testing of equipment, materials, plant, processes, and procedures likely to contribute to the development of the berryfruit-growing industry, and the purchase of any such equipment, materials, and plant for testing purposes:
- (b) The investigation, testing, and development of internal and overseas markets for berryfruit, whether fresh preserved or processed:
- (c) Notwithstanding paragraph (a) of section 5 of the Incorporated Societies Act 1908, the allocation of grants to any association for its purposes (being purposes connected with the promotion, development or organisation of the berryfruit-growing industry) of such sums as the Federation may from time to time decide:
- (d) The allocation of grants to any person, institution, or body conducting research into or in connection with the growing, processing, distributing, preserving, storing, or marketing of any berryfruit:
- (e) The publication from time to time of information relating to the activities of the Federation or generally relating to matters of interest to berryfruit growers and for the purpose of encouraging the development of the berryfruit-growing industry in New Zealand:
- (f) The provision of general advisory services to associations and their members in respect of the growing, processing, distributing, preserving, storing, and marketing of berryfruit:
- (g) The giving of assistance and advice to associations and their members on technical, administrative, and financial matters:
- (h) The acquisition of land and premises (whether by purchase, lease, or otherwise) for the purposes of the Federation:

- (i) The erection of premises for the purposes of the Federation, and the maintenance, alteration, or decoration of the Federation's premises:
- (j) The acquisition of patents or licences, relating to the berryfruit-growing industry:
- (k) The holding of lectures, seminars, exhibitions, or public meetings for the purpose of disseminating information relating to the growing, processing, distributing, preserving, storing, and marketing of berryfruit:
- (l) The payment of honoraria to officers of the Federation, the payment of salaries and wages to its servants, and the payment of travelling expenses to any of them:
- (m) The payment of expenses incurred in connection with—
 - (i) The day to day administration of the Federation:
 - (ii) Meetings of persons conducting the affairs of the Federation, or meetings of any committee appointed by the Federation:
 - (iii) Any general conference of berryfruit growers or associations.
- (n) Such other purposes in furtherance of the interests of berryfruit growers as the Federation thinks fit and the Minister approves.

7. Special levy—(1) In addition to the annual levy payable under section 5 of this Act, the Minister may, by notice in the *Gazette*, prescribe a special levy of such amounts or rates, for such purposes, and on such terms as may have been recommended to him by the Federation pursuant to a resolution passed in accordance with the rules of the Federation at an annual conference or meeting or at a special conference or meeting called for the purpose.

(2) No such resolution shall be submitted to the Minister unless it was carried at the conference or meeting by at least three-quarters of the votes cast.

(3) Every resolution recommending that the Minister prescribe a special levy shall specify—

- (a) The amounts or rates of the proposed special levy:
- (b) The growers or classes of growers or gardens or classes of gardens proposed to be levied:

(c) The purpose for which the money yielded from the levy may be spent:

(d) The method by which the levy is to be assessed and collected.

(4) The money received by the Federation pursuant to this section shall be spent only for the purpose for which the levy was imposed.

(5) The Federation shall, where necessary, assess in accordance with the amounts or rates of special levy prescribed by the Minister under this section the levy payable by each grower, and shall then notify him of the assessment.

(6) Within twenty-eight days of his being given notice of the assessment, or within such extended period as the Federation may allow, the grower shall pay the levy assessed to the Federation, unless he objects to the assessment, in which case he shall notify the Federation of his objection in accordance with section 8 of this Act.

8. Objections to assessments—(1) Where pursuant to section 5 or section 7 of this Act a grower has given notice of objection to any assessment, the Federation shall, as soon as practicable after receipt of the notice, inquire into the objection, and may either reassess the levy payable by the grower in respect of his garden or rescind the assessment to which the grower has objected:

Provided that no inquiry into an objection under this subsection shall be made unless reasonable notice of the date and time when and the place where it is to be considered has been given to the grower and the opportunity has been given for him to be heard at the appointed time and place (either personally or by counsel or by means of written submissions).

(2) The Federation shall, as soon as practicable (whether the grower was present at the inquiry or not) notify him of its decision and the reasons for it. Every such notice shall specify the amount to be paid by the grower as a result of any reassessment.

(3) Within fourteen days of his being notified by the Federation of its reassessment, or within such extended period as the Federation may allow, the grower shall pay the amount specified in the notice:

Provided that, in the case of an annual levy or a special levy based on garden areas, if the grower considers that the Federation has incorrectly estimated the area of his garden, he may, within the said fourteen days, notify the Federation

that he requires the question of the determination of the area of his garden to be referred to the Director-General under subsection (4) of this section.

(4) On receipt of the last-mentioned notice, the Federation shall as soon as practicable refer it to the Director-General who shall appoint a suitable officer of the Department to determine independently the area of garden in respect of which the levy is to be paid by the grower. When the officer so appointed has completed his determination, he shall notify the Federation and the grower of his findings; and those findings shall be final and binding on both the Federation and the grower.

(5) The grower shall at all reasonable times permit the officer to enter his garden for the purpose of enabling him to determine the area of the garden. If the grower refuses to give the permission, the Federation's reassessment made under subsection (1) of this section shall be deemed to be confirmed. Every officer appointed for the purposes of this section shall, if so required by the grower, produce a warrant duly authenticated by the Director-General showing the officer's authority to exercise the powers and duties conferred on him by this section.

(6) Within fourteen days of his being given notice of the officer's determination, or within such extended time as the Federation may allow, the grower shall pay the amount of the appropriate levy for the area of his garden (as finally determined under this section) or, as the case may be, any balance of the appropriate levy that may be outstanding and owing to the Federation.

9. Money recoverable as a debt—All money payable by way of levy under this Act shall be recoverable in any Court of competent jurisdiction as a debt due to the Federation.

10. Offences in respect of returns—Every grower commits an offence, and is liable on summary conviction to a fine not exceeding two hundred dollars, who—

- (a) Fails, without reasonable excuse, to lodge with the Federation any return required by this Act; or
- (b) Makes any return which to his knowledge is false in any material particular; or
- (c) Fraudulently avoids or attempts to avoid paying any annual or special levy payable by him pursuant to this Act.

11. Federation to comprise affiliated associations, etc.—The Federation shall at all times after its first general conference or meeting after the passing of this Act ensure that there is in existence throughout New Zealand such number of associations of berryfruit growers as will secure the adequate representation within the Federation of all growers. Every such association shall, except where it is not possible to comply with the provisions of the Incorporated Societies Act 1908, be incorporated as a branch of the Federation under section 2 of the Incorporated Societies Amendment Act 1920 or as an incorporated society under the Incorporated Societies Act 1908. The Federation shall, after the constitution of the associations as aforesaid, comprise those associations.

12. Membership of associations—(1) Notwithstanding anything to the contrary in the rules of the Federation or of any association, every grower who pays to the Federation the prescribed amount of annual levy in respect of the relevant date in any year shall, for the period commencing with that relevant date and ending with the relevant date in the next ensuing year, be entitled, by virtue of that payment and without payment of any membership or other fee, to be a member of any association for the time being established in respect of the district in which the garden is situated.

(2) Nothing in this section shall preclude any such association from admitting to membership any person other than a grower entitled to be a member of the association by virtue of subsection (1) of this section.

(3) Every person who is a member of any association by virtue of this section shall be entitled to exercise a vote at any meeting of the association.

13. Annual accounts, etc.—(1) The Federation and every association shall at all times each keep full and correct records of all its financial transactions, assets, liabilities, and funds.

(2) The Federation and every association shall each appoint some fit person to act as its secretary and to keep all records and books of account.

(3) At the end of each financial year ending with the thirty-first day of March, the Federation and every association shall each prepare an income and expenditure account showing its financial transactions for that year, together with a balance sheet as at that date.

14. Auditors and auditing of accounts—(1) The Federation and every association shall each, at its annual conference or annual general meeting or at any special conference or general meeting called for the purpose, appoint a member or members of the New Zealand Society of Accountants to hold office until its next annual conference or annual general meeting as its auditor or auditors for the purpose of auditing its accounts:

Provided that no person who is an officer or servant of the Federation or a member, officer, or servant of any association shall be capable of being appointed as an auditor under this subsection.

(2) All the provisions of section 166 of the Companies Act 1955 (which section relates to auditors' reports and auditors' right of access to books of account and to attend and be heard at general meetings) shall, so far as they are applicable and with the necessary modifications, apply to the Federation, and to every association, as if it were a company registered under the Companies Act 1955. For the purposes of this subsection, the term "profit and loss account" in the said section 166 shall be construed as meaning income and expenditure account.

(3) Any unqualified person who acts as auditor of the Federation or any association commits an offence and is liable on summary conviction to a fine not exceeding two hundred dollars.

15. Copy of balance sheet to be sent to Minister and members—(1) The Federation, and any association required to do so by the Minister, shall, not later than three months after the expiration of its financial year, furnish to the Minister a report on its proceedings for that financial year. There shall be affixed to the report copies of the income and expenditure account and balance sheet of the Federation or association, as the case may be, together with a copy of the report of the auditor or auditors thereon.

(2) Where in respect of any financial year of the Federation a grower has paid to it a levy pursuant to this Act, the Federation shall send to him a copy of the report sent to the Minister under subsection (1) of this section together with a copy of its income and expenditure account and balance sheet for that year and a copy of the report of the auditor or auditors in respect thereof.

(3) Every association shall in each year supply to each of its members a copy of its income and expenditure account and balance sheet in respect of its preceding financial year, together with a copy of the report of the auditor or auditors thereon.

(4) Nothing in this section shall derogate from the provisions of the Incorporated Societies Act 1908.

16. Copy of rules, etc., to be submitted to Minister—If so required by the Minister, the Federation and any association shall, within such reasonable time as the Minister may specify, send to him a copy of its rules together with any amendments thereto.

17. Offences by officers of the Federation and associations—

(1) Every officer of the Federation and of any association commits an offence, and is liable on summary conviction to a fine not exceeding two hundred dollars, who—

- (a) Fails, without reasonable excuse, to take all reasonable steps to secure compliance by the Federation or association of which he is an officer with any requirement imposed on it by this Act; or
- (b) Wilfully does any act in contravention of the provisions of this Act, or, in any case where the Federation contravenes any such provision, connives at the contravention.

(2) For the purposes of this section the term “officer” means any member of the executive committee or management committee (by whatever name it may be called) of the Federation or association and any paid secretary thereof.

18. Giving of notice—(1) Any notice required or authorised to be given under this Act shall be in writing and may be sent by registered letter or telegram addressed to the person to whom it is to be given at his usual place of business or, in the case of the Federation or any association, to the Federation or association at its registered office, or may be given personally to him or it.

(2) Where any notice is sent by registered post as aforesaid, the notice shall be deemed to have been given at the time when the letter would have been delivered in the ordinary course of post.

19. Act to be administered by Department of Agriculture—
The Schedule to the Department of Agriculture Act 1953 is
hereby amended by inserting, in the appropriate alphabetical
order, the words “The Berryfruit Levy Act 1967”.

SCHEDULE

Section 2

BERRYFRUIT TO WHICH THIS ACT APPLIES

Black currants, red currants, white currants, blueberries, boysenberries,
gooseberries, cape gooseberries, loganberries, raspberries, and straw-
berries.

This Act is administered in the Department of Agriculture.
