

Dried Fruits Levy Collection

No. 20 of 1971

An Act relating to the Collection of Levy under the *Dried Fruits Levy Act 1971*.

[Assented to 27 April 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Dried Fruits Levy Collection Act 1971*. Short title.

2. This Act shall come into operation on the date of commencement of the *Dried Fruits Levy Act 1971*. Commencement.

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

“ authorized person ” means—

 - (a) a person appointed by the Minister, by instrument in writing, to be an authorized person for the purposes of the provision in which the expression occurs; or
 - (b) a person included in a class of persons appointed by the Minister, by instrument in writing, to be authorized persons for the purposes of the provision in which the expression occurs;

“ occupier ”, in relation to premises, includes the person in charge of the premises;

“ the Secretary ” means the Secretary to the Department of Primary Industry.

4. The provisions of this Act that apply to and in relation to proprietors of packing houses bind the Crown in right of a State. Certain provisions to bind the Crown.

- 5.—(1.) Subject to sub-section (3.) of this section, levy on dried fruits of a season received for packing on or before the thirtieth day of September in that season is due for payment on the thirtieth day of November in that season. Due date of payment.

(2.) Subject to the next succeeding sub-section, levy on dried fruits of a season received for packing after the thirtieth day of September in that season is due for payment on the thirtieth day of November in the next season.

(3.) The Minister may, by notice in the *Gazette*, fix a date for payment of levy in relation to dried fruits of a specified kind of a specified season that is later than the date fixed in relation to those dried fruits by the preceding provisions of this section.

Liability of
packer in
respect of levy
of another.

6.—(1.) In this section, “levy” means levy on dried fruits received for packing that is payable by a person other than the packer, and includes an amount that has become so payable by way of penalty under sub-section (1.) of the next succeeding section by reason of default in the payment of levy.

(2.) For the better securing of the payment of levy, the packer is liable to pay to the Commonwealth an amount equal to any levy on dried fruits received for packing by him that has become payable but has not been paid to, or recovered by, the Commonwealth.

(3.) The packer may, on behalf of the grower of dried fruits received for packing, pay to the Commonwealth the whole or any part of levy on the dried fruits, either before or after that levy is due for payment.

(4.) The proprietor of a packing house may, notwithstanding any law of a State or Territory of the Commonwealth or any contract entered into before the commencement of this Act, refuse to receive into his packing house dried fruits on which levy may become payable unless the grower of the dried fruits first provides the proprietor with the funds necessary for the due payment, on behalf of the grower, of that levy.

(5.) Where—

(a) levy has been paid to the Commonwealth on behalf of the grower of dried fruits by the packer; or

(b) an amount in respect of levy has been recovered by the Commonwealth from the packer by virtue of sub-section (2.) of this section, the grower of the dried fruits is liable to pay to the packer an amount equal to the amount so paid or recovered, less any amount already paid by the grower to the packer in respect of that levy.

(6.) Where, at any time, the grower of dried fruits pays to the packer an amount in respect of levy on the dried fruits, the grower is discharged from liability to pay that levy to the same extent as if the payment had been made by him at that time to the Commonwealth, but the discharge does not affect any liability of the packer under sub-section (2.) of this section.

(7.) The last preceding sub-section does not apply where, before the payment is made to the packer, the grower has been notified in writing by or on behalf of the Minister that the Minister requires the grower to pay direct to the Commonwealth levy in respect of which the payment is made.

(8.) Where, under this section, levy is paid on behalf of the grower of dried fruits by, or an amount in respect of levy is recovered by the Commonwealth from, the packer, the grower of the dried fruits is, to the extent

of the amount paid or recovered, discharged from so much of his liability to the Commonwealth to pay that levy as has not previously been discharged by virtue of sub-section (6.) of this section.

(9.) Where the Minister is satisfied that it would, by reason of special circumstances, be unreasonable to require the proprietor of a packing house to pay, or to pay in full, an amount payable by him under this section, the Minister may release the proprietor in whole or in part from his liability, but such a release does not affect the liability of any person other than the proprietor.

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

(2.) Where—

(a) the proprietor of a packing house has received from another person an amount in respect of levy payable by that other person on dried fruits; and

(b) that levy is due for payment but has not been paid in full to the Commonwealth,

there is payable by the proprietor to the Commonwealth by way of penalty, in addition to the amount of that levy, an amount calculated at the rate of ten per centum per annum upon the amount so received by him, less any part of that levy paid by him on behalf of that other person, to be computed from the time when that levy became payable or from the time when he received that amount, whichever is the later.

(3.) The Minister or, subject to the next succeeding sub-section, an authorized person may, in a particular case, for reasons that the Minister or the authorized 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 the last preceding sub-section by an authorized person shall not exceed Ten dollars.

8.—(1.) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:— Recovery of levy.

(a) levy that is payable;

(b) an amount that is payable to the Commonwealth under section 6 of this Act; and

(c) an amount that is payable by way of penalty under the last preceding section.

(2.) In proceedings for the recovery of an amount referred to in the last preceding sub-section, an averment or statement in the complaint, claim or declaration of the plaintiff is evidence of the matter so averred or stated.

Packer may
recover levy
from grower.

9. Where the packer of any dried fruits received for packing has paid levy on those dried fruits, he is entitled to recover the amount of that levy from the grower of the dried fruits as a debt due to the packer from the grower.

Information
as to packing
houses.

10.—(1.) Where a person is, at the commencement of this Act, carrying on business as the proprietor of a packing house, he shall, within fourteen days after the commencement of this Act, inform the Secretary in writing that he is so carrying on business and shall furnish to the Secretary such information with respect to the packing house as the Secretary requires.

(2.) A person who, after the commencement of this Act, commences to carry on business as the proprietor of a packing house, shall, within fourteen days after so commencing, inform the Secretary in writing that he has so commenced to carry on business and shall furnish to the Secretary such information with respect to the packing house as the Secretary requires.

Penalty: Two hundred dollars.

Offences.

11.—(1.) A person shall not—

- (a) fail or neglect duly to furnish a return or information that he is required under the regulations to furnish; or
- (b) furnish, in pursuance of the regulations, a return or information that is false or misleading in a material particular.

Penalty: Two hundred dollars.

(2.) A prosecution for an offence against this section may be commenced at any time within three years after the commission of the offence.

Access
to premises.

12.—(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 there are on any premises books, documents or papers relating to the packing of dried fruits in respect of which levy is, or may be, 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 purpose of exercising the functions of an authorized person under this section.

(3.) If, on an application under the last preceding sub-section, the Justice of the Peace is satisfied, by information on oath—

- (a) that there is reasonable ground for believing that there are on the premises to which the application relates any books, documents or papers relating to the packing of dried fruits in respect of which levy is, or may be, 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, in accordance with the prescribed form, 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.) of this section or in pursuance of a warrant granted under the last preceding sub-section, 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 a warrant granted under sub-section (3.) of this section or in pursuance of the last preceding sub-section.

Penalty: Two hundred dollars.

(6.) The functions of an authorized person under this section are to search for, inspect, take extracts from and make copies of any books, documents or papers relating to the packing of dried fruits in respect of which levy is, or may be, payable.

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 any debt due to the Commonwealth under this Act, and in particular—

Regulations.

- (a) providing for the manner of payment of levy and other moneys payable to the Commonwealth under this Act;
- (b) requiring persons to keep records relating to the receipt of dried fruits in packing houses;
- (c) requiring the proprietors of packing houses to furnish returns or information relating to the packing houses to such persons as are prescribed; and
- (d) prescribing penalties not exceeding a fine of Two hundred dollars for offences against the regulations.