**Canned Fruits Levy Collection Act 1979**

**No. 162 of 1979**

An Act providing for the collection of levy imposed by the *Canned Fruits Levy Act* 1979.

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 *Canned Fruits Levy Collection Act* 1979.

**Commencement**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Interpretation**

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

“authorized person” means a person who is, by virtue of an appointment made by the Minister under section 9, an authorized person for the purposes of the provision in which the expression occurs;

“levy” includes a penalty under section 5;

“Levy Act” means the *Canned Fruits Levy Act* 1979;

“month” means a month of the year.

**Time for payment of levy**

**4.** (1) Levy becomes due and payable as follows:

(a) one-half of the levy imposed during the first half of a season becomes due and payable on 15 July in that season and the remainder of the levy so imposed becomes due and payable on 15 January in the year immediately following that season;

(b) levy imposed during the last half of a season becomes due and payable on 15 January in the year immediately following that season.

(2) In this section, “levy” does not include a penalty under section 5.

**Penalty for non-payment**

**5.** (1) Subject to this section, where the liability of a person to pay levy is not discharged at or before the time when that levy is due and payable, there is payable by him to the Commonwealth, by way of penalty, in addition to that levy, an amount calculated at the rate of 10% 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 due and payable.

(2) A person may make application to the Minister for the remission of a penalty payable by him under sub-section (1).

(3) Where the penalty to which an application under sub-section (2) relates does not exceed $500, the Minister may refer the application for decision to an authorized person.

(4) Where, on an application under sub-section (2), the person dealing with the application is satisfied that the penalty to which the application relates should be remitted, either in whole or in part, he shall remit the penalty in whole or in part, as the case may be, but, if he is not so satisfied, he shall refuse to remit the penalty.

(5) In sub-section (4), the reference to the person dealing with an application shall be read as a reference to—

(a) the Minister; or

(b) if the Minister has referred the application for decision to an authorized person—that authorized person.

**Recovery of levy**

**6.** (1) An amount of levy that becomes due and payable, or an amount of penalty that is payable, is a debt due to the Commonwealth.

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

**Refund of levy**

**7.** (1) Where, in respect of any canned fruits to which a certificate under sub-section 5 (2) of the Levy Act relates, there has been paid to the Commonwealth an amount equal to the levy that, but for the operation of that sub-section, would be payable in respect of those canned fruits, an amount equal to that amount shall be refunded by the Commonwealth.

(2) Where any levy has been overpaid, the amount overpaid shall be refunded by the Commonwealth.

(3) Where—

(a) an amount of levy has been refunded by the Commonwealth under sub-section (1) or (2); and

(b) the amount so refunded has been taken into account in calculating the amount of a payment under section 44 of the *Canned Fruits Marketing Act* 1979,

the Corporation shall pay to the Commonwealth an amount equal to the amount so refunded.

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

**8.** (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 are, on any premises, canned fruits on which levy is payable; or

(b) there are, on any premises, books, documents or papers relating to canned fruits on which levy is 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 are on the premises to which the application relates canned fruits on which levy is payable; or

(ii) there are on the premises to which the application relates books, documents or papers relating to canned fruits on which levy is 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) A warrant under sub-section (3) shall specify a date after which the warrant ceases to have effect.

(5) 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.

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

Penalty: $500.

(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 are canned fruits on which levy is payable, to enter those premises and search for, examine, weigh and count any canned fruits 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.

(8) In this section, “occupier”, in relation to premises, includes the person in charge of the premises.

**Appointment of authorized persons**

**9.** The Minister may, by writing signed by him, appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act.

**Power to call for returns**

**10.** An authorized person may, by notice in writing, require a person to furnish to him, within the time specified in the notice, such return or information in relation to matters relevant to the operation of this Act as is specified in the notice, including a return or information verified by statutory declaration.

**Offences in relation to returns, &c.**

**11.** (1) A person shall not, without reasonable excuse, fail or neglect duly to furnish a return or information that he is required under this Act or the regulations to furnish.

(2) A person is not excused from furnishing a return or information that he is required under this Act or the regulations to furnish on the ground that the information or return might tend to incriminate him or make him liable to a penalty, but any information or return so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against sub-section (3).

(3) A person shall not present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make or furnish to such an officer or person a statement or return, that is false or misleading in a material particular.

Penalty: $500.

**Review of decisions**

**12.** Applications may be made to the Administrative Appeals Tribunal for review of—

(a) decisions made by the Minister under sub-section 5 (4) remitting part only of a penalty or refusing to remit a penalty;

(b) decisions made by an authorized person under sub-section 5 (4) remitting part only of a penalty or refusing to remit a penalty; and

(c) decisions made by an authorized person under sub-section 5 (2) of the Levy Act refusing to issue a certificate.

**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 and, in particular—

(a) providing for the manner of payment of levy;

(b) requiring producers to keep records relating to the production of canned fruits;

(c) requiring persons to furnish returns for the purposes of this Act; and

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