

Users Guide to the Commodity Levies Act 1990

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Contents

Foreword from the Director General of Agriculture

Section 1

Page

Things an Industry Organisation should do Before Applying for a Compulsory Commodity Levy Order	1
<i>Preliminary Considerations</i>	1
What is the commodity that you want to levy?	1
What will the levy funds be spent on?	2
Who will be the levy payers?	2
What will be the basis of the levy?	2
How will the levy be collected?	2
<i>Satisfying the Minister on Section 5 Matters</i>	2
Is a compulsory levy necessary?	3
Is the intended spending of the levy permissible under the Act?	3
Written plan	3
International obligations	3
Levying imports	3
Will the use of the levy money be closely related to the interests of levy payers?	3
Will, overall, the benefits to levy payers from spending the levy be more than the disadvantages of paying it?	4
Does the organisation properly represent the interests of all potential levy payers?	4
Did the organisation adequately publicise its intention to hold a referendum and seek a commodity levy, consult with those affected, and inform them that they can put their views to the Minister?	4
Does a majority of potential levy payers agree to the levy?	4
<i>Consultations</i>	4
Consultation with potential levy payers	5
Consultation with third party levy collectors	5
Consultation with importers	5
Consultation with other parties	6

CHECKLIST 1	6
<i>Plan to Conduct a Support Referendum</i>	7
Ensure your list of potential levy payers is updated	7
Consult a lawyer	7
Become a body corporate	7
Amend the organisation's rules if necessary	7
Decide how the votes will be counted	7
Prepare a draft ballot paper	7
Decide on what basis the voting will be	8
Publicise the support referendum	8
Arrange for an independent auditor	8
Conduct the support referendum	8
<i>Preparing the Ballot Paper</i>	8
Description of levy proposal	8
Voting information section	11
Voting paper	12
<i>Further Things to Do Before Making an Application</i>	13
Prepare a plan	13
Establish mechanisms for accounting to those primarily responsible for paying the levy	13
CHECKLIST 2	13

Section 2

Making the Application	15
<i>A Information and Evidence Required to Satisfy the Minister that a Levy Order can be Made</i>	15
The industry organisation	15
Benefits and disadvantages of a compulsory levy	16
Necessity for a compulsory levy	16
Levies on imported produce	16
Consultation	16
The support referendum	16
Financial and accounting systems	17
Other matters	17
<i>B Information on Matters to be Specified in the Levy Order</i>	17

Section 3

Requirements of the Organisation after the Levy Order has been Made 19

Appendix 1

Diagram — Making a Levy Order Under the Commodity Levies Act21

Appendix 2

Example Ballot Paper 23
Description of Levy Proposal 23
Voting Information Section 27
Voting Paper 29

Throughout this guide, questions and statements are addressed to a second person. They assume that the reader is a member of an industry organisation that has been formed, or will be formed, and that the reader wishes to prepare an application for a commodity levy.

Numbers in brackets throughout this guide refer to the relevant sections, subsections and paragraphs of the Commodity Levies Act 1990 (as amended). For example, 5(2)(j) refers to section 5, subsection (2), paragraph (j) of the Act.

Foreword

The farming and horticultural sector has a large number of small producers. Individual producers are not usually large enough to fund activities such as research, information dissemination, and product promotion, that have application to the industry as a whole. The nature of producing and marketing primary products means that individual producers are not able to capture the benefits of expenditure on such activities; there is no incentive for individuals to fund activities benefiting all producers.

Industries with small numbers of members have successfully used voluntary levies to fund “industry good” activities. However, as the size of the industry increases the number of non payers or free riders increases. Provided that free riders can be excluded from receiving the benefits purchased from voluntary levies, there is not a problem. However, non payers usually cannot be excluded from receiving the benefits of voluntary levies.

The need for industry funding, and the free rider problem faced by industry organisations, motivated government to provide for organisations to levy their industries when there was sufficient support among levy payers. The levy mechanism is provided by the Commodity Levies Act.

The purpose of the Commodity Levies Act is to enable an industry organisation representing a distinct group of prospective levy payers to impose a levy on a commodity. A prospective levy payer would be a producer of the commodity to be levied.

Government recognised that compulsory levies had the potential to impact adversely on aspects of liberty, equity and efficiency. Consequently safeguards were included in the Act to avoid or reduce these adverse affects on levy payers. These safeguard provisions are:

- (a) restricting the uses of compulsory levies;
- (b) prescribing the requirements to be met before government will authorise a levy;
- (c) prescribing the practices to be carried out by groups that are recipients of compulsory levies;
- (d) conscientious objector provisions;
- (e) provision for resolution of disputes;
- (f) provision for keeping of records and accountability to levy payers;
- (g) a sunset clause on levy orders;
- (h) levy order confirmation requirements; and
- (i) provision for compliance audits.

The need for safeguards in the Act has resulted in a large number of procedural requirements that an organisation applying for a levy must comply with. This guide describes how an organisation can apply for a compulsory levy.

This guide has been prepared by the Ministry of Agriculture, to assist industry organisations wishing to apply for a compulsory levy under the Commodity Levies Act.

Bruce J Ross
Director General

Section 1 Things an Industry Organisation should do before applying for a Compulsory Commodity Levy Order

Preliminary Considerations

The Commodity Levies Act enables an industry organisation to seek a compulsory levy on a commodity. The power to collect a compulsory levy is a considerable privilege, but also a responsibility which carries obligations. Fulfilling all the requirements of the Act and having a compulsory levy imposed is a complex process which cannot be done quickly. A diagram of this process is shown in Appendix 1. It can take about a year to carry out consultations and prepare for a referendum, and a further year from a successful referendum to when the levy comes into force. The process may be longer if your organisation meets and makes decisions infrequently.

MAF has developed a basis of experience through working with industry groups and processing applications. This guide is based on that experience, but is only a guide. MAF will accept no responsibility for the outcome of levy applications based on this guide. It is essential that you purchase a copy of the Commodity Levies Act 1990 and its 1993 and 1995 amendments, and study it. You will be unable to make a successful application without reference to the Act.

It is also essential that you obtain your own legal advice. Note, though, that reasonable lawyers may, and often do, differ in their interpretation of the Act. You should recognise that, in the end, it is the Minister's legal advice at the time the application is being considered that counts.

Your organisation may already be funded by a compulsory levy, under this Act or another Act. However you will still need to follow the same process and provide the same information as for a new levy.

Will your organisation collect sufficient levy money to sustain all the costs of running an organisation? Perhaps you should consider sharing some of the administration costs with another organisation.

So far organisations have been successful in having 23 levy orders imposed. You may find it helpful to talk to some of these organisations about the process, and look at their ballot papers and levy orders.

The most critical part of the process is drafting the referendum ballot paper. A levy is imposed by means of a levy order, signed by the Governor-General. The levy order can vary very little from the contents of the ballot paper. It is therefore essential that you have thought the proposal through, and fully consulted all those who could be affected by the proposed levy, before the ballot paper is finalised. The initial questions in this guide refer you to the greater detail in the section on preparing the ballot paper. You are also advised to seek your own legal advice throughout the process, and particularly at the ballot paper drafting stage.

The first matters to decide are:

- **What is the commodity that you want to levy?**

Is it an agricultural, farmed, forestry, horticultural, mineral or wild product, according to the definitions of those types of product in section 2(1) of the Act? [See also section 2(2)].

There can be complexities in defining the commodity, particularly if you want to base your levy collection on sales of the commodity, and if you want to exempt some production from the levy through the way that the commodity is defined. For example, you may want to include or exclude product sold at the gate, and product processed before sale by the producer. Some of these points are discussed in regard to drafting the ballot paper, on page 8.

You can include only one commodity in an order, but a commodity can have several classes, e.g., different types of fresh vegetables.

- **What will the levy funds be spent on?**

Levy funds **may** be spent on:

- production and market research;
- market development;
- promotion;
- plant and animal protection;
- quality assurance programmes;
- education and training; and
- administration of the industry organisation.

With very limited exceptions, levy funds **may not** be spent on commercial or trading activities. [See section 10]

- **Who will be the levy payers?**

The producers of the commodity are generally primarily responsible for paying the levy, which they could pay directly or via levy collectors. Consider carefully whether you will want to include all producers of the commodity as potential levy payers or only some of them, bearing in mind how they can pay the levy. Do you want to include or exclude as levy payers producers who:

- produce a small volume of product or have a small area of production?
- export or import?

Consider the practicability, whether there is sufficient commodity involved to make it worthwhile collecting a levy on it, and the requirements of the Act.

You will need to compile a list of all potential levy payers, including those who are not members of your organisation, and make energetic efforts to reach them all for consultations. [See the further points under consultation with potential levy payers on page 5]

- **What will be the basis of the levy?**

The basis will have to be one of the options listed in section 5(2)(ac) — e.g., volume, value or area. [See the points under (d) of the section on preparing the ballot paper, page 9]

- **How will the levy be collected?**

Will the levy payers (those primarily responsible) pay the levy direct to the organisation, or will the organisation need the co-operation of third party levy collectors to collect the levy? Or will some levy be paid directly and some collected? [See section 6(1)(f)]

Often it is most practicable to collect the levy at first point of sale. What difficulties might there be with having levy collectors? What would be the organisation's administrative cost of collecting this way compared to direct payment?

If you want to use levy collectors you will have to consult with them on the proposed collection and on the fee (if any) to be paid to them. [See the section on consultations, page 4]. Consider whether the levy could be collected from all levy payers in this way.

Satisfying the Minister on Section 5 Matters

Before the Minister can recommend the making of a levy order, your organisation will have to comply with a rigorous procedure to satisfy the requirements of section 5(2) of the Act. It is the responsibility of the organisation applying for the levy to provide convincing evidence to the Minister that all the requirements of the Act have been met, particularly in regard to the questions below. Refer to the section on the application to the Minister on page 15, to see what evidence will be required.

- **Is a compulsory levy necessary?**

You will have to provide evidence that:

either

it would be impossible or impracticable to operate a levy voluntarily (for example that you have tried to collect a levy voluntarily and failed); [See section 5(2)(m)(i)]

or

you cannot restrict who benefits from the levy spending (a free rider problem). [See section 5(2)(m)(ii)]

- **Is the intended spending of the levy permissible under the Act?**

Levy funds **may** be spent on:

- production and market research;
- market development;
- promotion;
- protecting or improving plant and animal health;
- quality assurance programmes;
- education and training; and
- administration of the industry organisation. [See section 10]

Levy funds **may not** be spent on any commercial or trading activity, except with special permission from the Minister if the Minister is convinced that:

- it will benefit the majority of levy payers; and
- those who don't pay a voluntary levy would receive benefits from the spending (there is a free rider problem); and
- "considerably more than half" of levy payers support the proposal. [See sections 10(4) and 10(5)]

These provisions would only be applied in unusual circumstances. These commercial or trading activities cannot be specified in the levy order as purposes for which the levy will be spent.

Note that the requirement for the support of "considerably more than half" of levy payers is more stringent than a normal referendum under the Act.

- **Written plan**

You will have to provide the Minister with a written plan, showing how the levy collected in the first year will be spent. [See section 5(1)(b)]

- **International obligations**

The spending of the levy must not be contrary to New Zealand's international legal obligations. [See section 6(3)]

- **Levying imports**

If you want to levy **imported commodity** as well as that produced in New Zealand, you will have to comply with sections 5(2)(k), 6(2)(c), 6(4), and 6(5). For instance, the rate must be the same as or lower than the rate on New Zealand production.

- **Will the use of the levy money be closely related to the interests of levy payers?** [See section 5(2)(i)]

- **Will, overall, the benefits to levy payers from spending the levy be more than the disadvantages of paying it?**

You will need to provide evidence of what the benefits and disadvantages are, and whether there are certain groups of producers for whom disadvantages could be greater than benefits. [See section 5(2)(j)]

- **Does the organisation properly represent the interests of all potential levy payers?**

Your organisation will have to be a body corporate, with rules that enable all levy payers to be members and vote on levy matters. You must find a way to let levy payers who are not members contribute to decisions on spending the levy. This could be through letting them vote on this matter at AGMs or through separate consultations. If your organisation has a system of representative voting, make sure that the system enables all levy payers to have information about proposed levy spending and know when there will be voting on levy spending, so that they can make their views known. [See sections 5(2)(l) and 5(2)(n)]

- **Did the organisation adequately publicise its intention to hold a referendum and seek a commodity levy, consult with those affected (including levy payers and collectors) and inform them that they can put their views to the Minister?** [See sections 5(2)(ad),(a),(g)]

See the section on consultations below.

- **Does a majority of potential levy payers agree to the levy?**

You will need to provide evidence from a referendum that complies with all the requirements of the Act that there is sufficient support for the levy. [See sections 5(2)(aa)-(am)]

Contact the Government Ministry responsible to the Minister that you intend approaching and arrange to discuss whether what you want to do is likely to be possible under the Act, and the process you will need to follow. The Ministry of Agriculture (MAF) administers the Commodity Levies Act, but only deals with levy applications for agricultural and horticultural products. Contact the Ministry of Fisheries for applications relating to fish, the Ministry of Forestry for forest products and the Ministry of Commerce for mineral products.

These guidelines do not cover every aspect of the Act that you will need to know about. MAF has found that each levy proposal is different in significant ways. You therefore need to follow the actual Act closely.

Consultations

Consultation is a very important part of the process. **The Minister cannot approve a levy order** without good evidence that you have made substantial efforts to contact and consult *everyone* likely to be affected by a levy (particularly payers and collectors).

Those affected must be sufficiently informed, and be given sufficient opportunity, to put their views to yourselves and/or to the Minister, so that their views can be taken into account **before drafting the referendum ballot paper**. This is because the main matters that have to be included in the levy order cannot be specified differently from in the ballot paper. [See section 5(2)(am)]

Adequate consultation includes making a genuine effort, providing sufficient information, allowing sufficient time, having meaningful discussion, keeping an open mind, taking notice of what the other party says, and not making a decision until that party has had their say. These principles were established by the Court of Appeal in: *Wellington International Airport Limited v Air New Zealand* [1993] 1 NZLR 671.

Consultation is different from negotiation, and does not require that agreement be reached.

Consultation with potential levy payers

Inform and consult with prospective levy payers about the proposal. You must satisfy sections 5(2)(a), 5(2)(g), 5(2)(i), 5(2)(j), 5(2)(1). This could involve the following methods that have been used by organisations:

- **compile and regularly update lists** of potential levy payers and collection agents and anyone else likely to be affected, such as other industry organisations. You must make an energetic effort to include as many non-members as possible on the list of potential levy payers. You could check with Statistics New Zealand to compare its figure for the number of producers of your commodity; and
- **widely publicise** the intention to apply for a compulsory levy in articles in industry journals and newspapers. Issue press statements. Discuss the reasons why a compulsory levy is proposed, possible rates of levy, who the levy payers would be, how the levy would be spent, and what the commodity to be levied would be; and
- **hold meetings** at which prospective levy payers (including both members of the industry organisation and those who are not members of the organisation, but who would be liable to pay a compulsory levy) can discuss the proposal; and
- **send newsletters** to prospective levy payers in which the proposal to apply for a compulsory levy is discussed; and
- **make appropriate arrangements to consult with Maori** if necessary, as consultation with Maori will involve a different procedure.

Advise prospective levy payers that they may send their views directly to the relevant Minister.

Consultation with third party levy collectors

Consult with **all** those you want to collect the levy, on:

- **collecting** the levy; [See section 6(1)(f)]
- the **mechanisms** for collecting levy funds; [See sections 6(1)(g), 7(c), 7(d), 7(e)]
- **keeping records** and **making returns** (if any) to the levying organisation; [See sections 6(2)(d), 14]
- what **collection fees** (if any) would be retained by levy collectors. [See section 6(1)(o)]

Check with the levy collectors about what levies they already collect and what operating systems they use, and try to fit your requirements to those systems. Discuss whether the fees would be GST inclusive or exclusive, to ensure there is no confusion later. Levy collectors have indicated in the past that they prefer collection fees to be specified on a GST exclusive basis. For an organisation collecting several levies it is inconvenient and costly if some levies and fees are GST inclusive and some GST exclusive. It is most important that you make every effort to consult with all potential levy collectors at an early stage, and take their views into account.

Obtain written evidence of the views of levy collectors, and advise them that they may provide their views directly to the relevant Minister. [See section 5(2)(g)]

Consultation with importers

If you want to levy imported product, **check** with the Government Ministry responsible if there are any international obligations (e.g., CER, GATT) relating to the imported commodity to be levied. [See sections 5(2)(k)(iii), 6(3)]

Discuss with importers the proposed rate, the benefits to importers of a levy, and seek their views on paying a levy. [See sections 6(2)(c)(ii), 5(2)(k)(i), 6(4), 6(5)6(5), (5(2)(g)]

Consult with importers on making returns (if any) to the levying organisation. [See section 6(2)(d)]

Obtain written evidence of the views of importers, or advise them that they may provide their views directly to the relevant Minister. [See section 5(2)(g)]

Consultation with other parties

Inform all other parties who are likely to be affected by the proposal, and advise them that they may provide their written views directly to the relevant Minister. Other parties may include:

- other organisations already collecting a levy on the commodity (e.g., the New Zealand Fruitgrowers Federation which collects a levy on most fruit production); and
- other organisations that may represent some producers of the commodity (e.g., the Tree Crops Association which includes nut and fruit tree growers, BioGro and the BioDynamic Association which represent organic growers, the Association of Smallfarmers, companies such as Watties that have contracts with some growers). [See sections 5(2)(a), 5(2)(g)]

Checklist 1

- What is the commodity that you want to levy?
- What will the levy funds be spent on?
- Who will be the levy payers?
- What will be the basis of the levy?
- How will the levy be collected?
- Is a compulsory levy necessary?
- Is the intended spending of the levy permissible under the Act?
- Do you have a written plan of how the levy collected in the first year will be spent?
- Will the spending of the levy be in line with New Zealand's international obligations?
- If you want to levy imports, is your proposal permissible under the Act?
- Will the use of the levy money be closely related to the interests of levy payers?
- Will, overall, the benefits to levy payers from spending the levy be more than the disadvantages of paying it?
- Does the organisation properly represent the interests of all potential levy payers?
- Did the organisation adequately publicise its intention to hold a referendum and seek a commodity levy, consult with those affected, and inform them that they can put their views to the Minister?
- Does a majority of potential levy payers agree to the levy?

Consultations

- Consultation with potential levy payers
- Consultation with third party levy collectors
- Consultation with importers
- Consultation with other parties

Plan to Conduct a Support Referendum

Plan to conduct a support referendum with the use of a ballot paper. [See section 5(2)(aa)] The following actions are needed prior to a referendum.

- (a) **Ensure your list of potential levy payers is updated** so that you can send them all a ballot paper.
- (b) **Consult a lawyer** to advise you on how to comply with the Act, and particularly the wording of your ballot paper. (Note, though, that reasonable lawyers can, and often do, differ in their interpretation of the Act. You should recognise that, in the end, it is the Minister's legal advice at the time the application is being considered that counts.)
- (c) **Become a body corporate** if not one already (e.g., a limited liability company, an incorporated society) (see discussion on industry organisations on page 15). [See sections 2, 6(1)(a)]
- (d) **Amend** the organisation's rules if necessary to enable all potential levy payers to be represented (ideally levy payers should be able to join the organisation and/or have a say on levy matters). [See section 5(2)(l)]
- (e) **Decide** what questions you will ask voters in the referendum in order to determine the number of *supporters*. This will need two questions:
 - (i) asking whether they support the levy proposal;
 - (ii) asking one of the following:
 - how much of the commodity was produced; or
 - the value of the commodity produced; or
 - the area of production of the commodity produced; or
 - the things used in production of the commodity,by the voter during the past 12 months. [See sections 2(1), (5(2)(ag), (ah), (ai), (aj), (ak), (al)]

You will also need to count the number of *participants* i.e., the potential levy payers who returned a ballot paper (including ballot papers not properly completed). [See section 2(1)]

- (f) **Decide** how the votes will be counted. The Act does not state what is counted as an invalid vote. The organisation should therefore consider this, and state any particular requirements on the ballot paper. The ballot paper should also clearly state that an invalid vote, returned before the cut-off time, will be counted as a participant. This means that it will effectively be counted as a vote against the proposal, because support is measured in terms of supporters as a proportion of participants. Further, the ballot paper should state that a vote returned after the cut-off time will not be counted at all. [See section 5(2)(aj)]
- (g) **Prepare a draft ballot paper**, which comprises details of the levy proposal, voting information, and a voting paper, and provides sufficient, clear information to enable potential levy payers to decide whether or not to support a levy (see page 8 for a full discussion of preparing a ballot paper). [See sections 5(2)(ab), 5(2)(ac)]
- (h) **Note** that finalising a ballot paper may take many drafts and considerable time (two to three months), depending on the extent of any difficulties that may emerge. Consider requesting a meeting with the Government Ministry responsible, which may shorten this time.

You are advised not to proceed with the referendum until you have addressed any problems the Ministry may find in the ballot paper.

- (i) **Remember** that the levy order cannot differ in any material way from the ballot paper with respect to the things listed in section 6(1) of the Act. For each of these things, you must ensure that the ballot paper contains what will be wanted for the levy order, taking into account any views of those consulted. [See section 5(2)(am)]

- (j) **Decide on what basis the voting will be.** The basis has to be one of the options in section 5(2)(ac) (e.g., production, area). The basis does not have to be the same as the basis on which you want to impose the levy. However, if the basis is different, you will have to provide evidence to convince the Minister that the impact of the voting basis is *substantially similar* to the proposed impact of the levy. [See section 5(2)(al)] For example, if the levy is to be based on value and the vote on production, you would have to prove that there is little variation in yields and prices for the commodity. This may not be the case if the commodity includes different varieties and grades.
- (k) **Publicise** the support referendum so that potential levy payers are given a reasonable opportunity to be adequately informed about the nature and possible consequences of the referendum. This may involve publicising the referendum in the main daily newspapers and industry journals, advising where ballot papers can be obtained. [See section 5(2)(ad)]
- (l) **Arrange** for an independent auditor to scrutinise the completed voting papers and summarise the results of the referendum. [See sections 5(2)(ab), (ag)]
- (m) **Conduct** the support referendum so that potential levy payers (members and non-members of the organisation) are given a reasonable opportunity to participate.
 - Provide a ballot paper and return envelope.
 - Allow adequate time for the voting papers to be returned (at least three weeks), taking into account seasonal demands on potential levy payers.
 [See section 5(2)(ae)]

Preparing the Ballot Paper

The Minister cannot approve a levy order unless the ballot paper was “competently devised”. [See section 5(2)(ab)]

The ballot paper must include information that specifies **all** the matters required by section 6(1) of the Act to be specified in a levy order, and any other matters that **may** be included in a levy order, such as section 6(2) matters, that would significantly affect the impact of the levy. [See section 5(2)(ac)]

“Competently devised” involves the following considerations:

- Each matter, particularly “the commodity”, “basis of the levy” and “who will pay the levy” (both those primarily responsible and levy collectors), should be defined in a way that is clear and simple and understandable to voters, but also will be clear to the legal drafter who will draft the levy order. Remember that the levy order will have to stick closely to the wording of the ballot paper. If the meaning of one of these key definitions could be interpreted in more than one way, the levy order could be legally challenged.
- Check that your definitions include all possibilities and are consistent with each other.
- Use the same terminology for each matter throughout the ballot paper, including the voting information section and voting paper.
- The voting paper should give clear instructions on how to complete it and what will be counted as an invalid vote.

An example ballot paper is in Appendix 2.

The ballot paper should have **three sections**: a description of the levy proposal; a voting information section; and the voting paper.

Section 1: Description of levy proposal

The Minister cannot approve the levy order unless the ballot paper stated all the matters required by sections 5(2)(ac) and 6(1). The ballot paper **must state** the following: [See section 6(1)]

- (a) The name of the **industry organisation** to which the levy is to be paid. [See sections 2 and 6(1)(a)]
- (b) The **commodity** on which the levy is to be imposed. [See section 6(1)(b)]

It is important to define the commodity carefully, so that it is clear what is included. For example:

- you should state whether imports are included (see comments on levying imported commodity on page 3);
- you can state whether the commodity is to be processed, exported or sold fresh, effectively exempting some producers such as non-commercial producers from paying the levy; and
- several related commodities or classes of commodity can be included as one commodity so long as this is explained clearly.

- (c) Who the **levy payers** will be — *the persons primarily responsible for paying the levy* — state clearly who will be included. [See section 6(1)(c)]

This is generally the growers or producers of the commodity. Those who will pay the levy should be related to the commodity (b) and basis of the levy (d). State clearly who will be included. For example, whether only commercial production will be levied, whether gatesellers and/or those growers who also process or export the commodity will be included.

- (d) The **basis** on which the levy is to be paid (e.g., livestock numbers, area of orchard, value of production, numbers of apiaries held). [See sections 5(2)(ac), 6(1)(d)]

The basis has to be one of the options listed in section 5(2)(ac). There can be only one basis. State clearly what is included. For example, if the basis is area of land, state whether those who are not producing yet but have the means of production are included, such as those with newly planted orchards. If the basis is value, the value should be determined on the basis of actual transactions, or with reference to some external valuation, such as that specified in a Customs declaration. Any notional price for estimating the levy from grower/processors has to be carefully defined. Note that “thing” in option (iv) of section 5(2)(ac) is defined in section 2 of the Act.

- (e) Which persons, if any, are to be **exempt** from paying the levy. [See section 6(1)(e)] Note that this provision relates only to exemption of persons, not exemption of types of commodity etc. Potential exemptions might include: home gardeners; producers of organically grown produce; those with orchards under a particular size or sales/production under a particular level; gate sellers; apiarists with fewer than two apiary sites; those who supply a company which has its own research programme; and those who both grow and process the commodity. Note that so far, no levy orders have exempted any persons under this provision, although they have exempted various categories of the commodity through the definitions of the commodity and levy payers.

- (f) **How** the levy is to be paid. The levy can be paid directly by those primarily responsible, or paid via levy collectors (e.g., merchants, auctioneers etc) or you can state that some growers pay directly and some pay via levy collectors. [See section 6(1)(f)]

Note that, since the 1995 Amendment Act, you can arrange for some growers to pay directly and some via levy collectors.

Make sure your wording is consistent with “the commodity”, “basis of the levy” and “persons primarily responsible”.

- (g) The mechanisms by which any **levy collectors** will pay and recover the levy, and their duties. [See section 6(1)(g)]

Levy collectors must be able to recover the levy **directly** from those primarily responsible for paying it.

You can include keeping information and making returns to the organisation as duties of levy collectors.

- (h) The restrictions, if any, on the **disclosure of sensitive or commercial information** that is required for the operation of a levy order under the Act. [See section 6(1)(h)]

Make sure that everyone likely to obtain information in the levy collection process is included here.

(i) **Either**

- (i) how the organisation is to spend the levy;

or

- (ii) a means by which the industry organisation is to consult levy payers about how it should spend the levy funds (e.g., approval of a draft budget circulated prior to an AGM of levy payers). [See sections 6(1)(i), 6(2)(a), 10]

The expenditure must relate to uses permitted under section 10. If you choose option (i), state clearly what the uses of levy money will be.

If you choose option (ii), it is unnecessary to include details of expenditure, but clearly specify who must be consulted in relation to spending the levy money.

- (j) Whether it is intended that the levy funds will be spent by the industry organisation itself, or disbursed and spent by branches or subsidiaries of the organisation. Note that levy funds may not be spent by anybody other than the organisation or its branches/subsidiaries. [See section 6(1)(j)]

- (k) The **period(s)** in respect of which the levy funds are to be paid. [See section 6(1)(k)]

Clearly specify what period of time each levy payment should be based upon. For example, each payment could cover all the sales in the preceding month, or in the 12 months ending 30 September.

- (l) Whether the levy will be paid at a **single rate, or two or more different rates**, and the different kinds, or classes, of commodity on which different levy rates are to be imposed. [See section 6(1)(l)]

Clearly define what class of commodity is to be levied at each rate. Note that you can set different rates only for different classes of commodity, not for different regions where the commodity is produced.

- (m) The **levy rate prescription** — specify **one** of the following levy rate prescriptions:

- a maximum levy rate with the organisation empowered to set the actual rate; or
- a maximum rate of increase in any specified period, with the initial rate to be approved by the Minister, and the later rates to be fixed by the organisation either within the maximum or with the approval of the Minister; or
- a rate for a specific period, to be fixed by the industry organisation if it is not higher than the previous rate, or fixed by the Minister if it is higher than the previous rate. Note that the reference to a “previous levy rate” means that this option is not appropriate for organisations seeking their first levy under the Commodity Levies Act.

[See section 6(1)(m)]

Make sure you have covered all the future periods for which levy will be paid. If there are several levy rates, specify a mechanism for setting each one.

Specify whether the rate is GST inclusive or exclusive. (An organisation has to register for GST if it has an annual turnover of over \$30,000.)

- (n) How levy rates are to be **notified**. Levy rates must be published in the New Zealand Gazette; other notification could include mailing to each individual, and notices in industry journals. [See section 6(1)(n)]

- (o) The level of, or a means of calculating, the **fee**, if any, to be paid to levy collectors. [See section 6(1)(o)]

You must identify and consult with as many proposed levy collectors as possible on the level of fee. While agreement with levy collectors is not required, it is of course desirable. Factors to take into account in determining fees include the costs of collection and the amount the organisation can afford.

Make sure you have specified whether the collection fees are GST inclusive or exclusive.

(p) **How often** the levy is to be paid (e.g., annually, quarterly etc). [See section 6(1)(p)]

(q) **Either**

- the due dates and the latest dates by which the levies must be paid;

or

- the means of ascertaining these days.

[See section 6(1)(q)]

Make sure that the due date is specific enough to ensure there is a latest date for payment.

For example, the summerfruit ballot paper stated:

The due date of payment is the day on which the fruit is sold or processed.

The last day for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.

If you have specified two methods of payment under (f), state due and latest days for each method, e.g., for the processing tomatoes levy, the due and latest days are different for tomatoes processed by growers and other tomatoes.

(r) Describe what **accounts and records** should be kept by third party levy collectors, persons primarily responsible for paying the levy, and the industry organisation, and for how long. [See section 14]

In addition, the ballot paper should include any of the matters that a levy order **may** specify that you intend to include in the levy order and that would significantly affect the impact of the levy.

These matters could include:

(a) Any **maximum and minimum amounts** of levy payable. [See section 6(2)(b)]

If you wish to set maximum and/or minimum levy amounts, discuss this with the Government Ministry first as there are pitfalls. The Minister would have to be convinced that one part of the industry would not bear disproportionately high costs.

(b) Circumstances under which **late payment** of a levy is allowed. [See section 6(2)(e)]

(c) **Penalties** for late payment or nonpayment of levies. [See section 6(2)(f)]

(d) The making of **returns** to the industry organisation to enable it to determine the levy amounts that levy payers should pay. [See section 6(2)(d)]

Section 2: Voting information section

The voting information section of the ballot paper should specify:

(a) who is entitled to vote;

(b) the date and time by which voting papers have to be returned, and that votes received after that time will not be counted;

(c) what will be counted as an invalid vote; [See (f) on page 7]

(d) what results are needed to enable the levy order application to proceed;

- (e) where the results will be published; and
- (f) names and addresses of where to send the completed voting paper and where to obtain further information.

The terms used in the voting information section should be worded in the same way as in the other sections of the ballot paper.

Section 3: Voting paper

The voting paper section of the ballot paper should state how to complete a valid voting paper and that invalid votes are included as participants. (See (f) on page 7)

The voting paper should contain **two questions**:

- (i) asking whether the voter supports the levy proposal; and
- (ii) asking one of the following:
 - how much of the commodity was produced; or
 - the value of the commodity produced; or
 - the area of production of the commodity; or
 - the things used in production of the commodity;

by the voter during the past 12 months.

If the option you choose is different to the proposed basis of the levy, you will have to satisfy the Minister at the time of the application that the impact of imposing the levy on the proposed basis will be substantially similar to the impact of imposing it on the basis on which voting was conducted. [See section 5(2)(al)]

Questions (i) and (ii) above will measure the level of support for the levy proposal. [See sections 2(1), 5(2)(ag),(ah),(ai),(aj),(ak)]

The number of potential levy payers who returned a voting paper (including voting papers not properly completed) is the number of *participants*. [See section 2(1)]

The voting paper should specify the date and time by which it must be returned. This should generally be about three weeks from the date of posting out ballot papers.

All the terms used in the different sections of the ballot paper should be worded consistently.

Include in the voting paper a **Privacy Act** clause. The clause should be worded either as below or similarly to that in the example in Appendix 2, depending on whether you intend to keep or destroy the information about voters after the levy order has been made.

Privacy Act 1993: the ... (organisation) ... (whose address is above/below) advises that the information in this voting paper is collected to satisfy the requirements of Part I of the Commodity Levies Act 1990. The supply of the information is voluntary. But, without it, your vote is invalid and cannot be used towards seeking approval of a levy order. The information will not be disclosed to any person or association other than the ... organisation ... and the ballot scrutineers ... Under the Privacy Act 1993, you are entitled to access to, and correction of, the information pertaining to yourself as contained in this voting paper.

We recommend that you contact the Office of the Privacy Commissioner to check that your ballot paper fulfills the requirements of the Privacy Act.

Further Things to Do Before Making an Application

Prepare a plan (a draft budget indicating the broad categories of expenditure), showing how the industry organisation proposes to spend levy funds collected in the first year. [See section 5(1)(b)]

Establish mechanisms for accounting to those primarily responsible for paying the levy. This may include regular newsletters to growers, quarterly statements of accounts, draft budgets sent out to levy payers or published in industry journals and newspapers, annual general meetings of levy payers etc. The Act requires levying organisations to send copies of annual reports (including financial statements) to the Minister and to levy payers. [See sections 5(2)(n), 25]

Checklist 2

Plan to Conduct a Support Referendum

- Ensure your list of potential levy payers is updated
- Consult a lawyer
- Become a body corporate (if not one already)
- Amend the organisation's rules if necessary
- Prepare a draft ballot paper
- Publicise the support referendum
- Arrange for an independent auditor

Preparing the Ballot Paper

Description of levy proposal

- The name of the industry organisation
- The commodity
- Who the levy payers will be
- The basis on which the levy is to be paid
- Which persons, if any, are to be exempt from paying the levy
- How the levy is to be paid
- The mechanisms by which any levy collectors will pay and recover the levy
- The restrictions, if any, on the disclosure of information
- How the organisation is to spend the levy, or consultations on spending
- Whether levy funds will be spent by the organisation itself, or spent by branches or subsidiaries
- The period(s) in respect of which the levy funds are to be paid
- Whether the levy will be paid at a single rate, or two or more different rates
- The levy rate prescription
- How levy rates are to be notified
- The fee, if any, to be paid to levy collectors
- How often the levy is to be paid

Checklist 2 (contd)

- The due and the latest dates for payment
- Accounts and records to be kept
- Any maximum and minimum amounts of levy payable
- Circumstances under which late payment of a levy is allowed
- Penalties for late payment or nonpayment of levies
- The making of returns to the industry organisation

Voting information section

- Who is entitled to vote
- Date and time by which ballot papers have to be returned
- What will be counted as an invalid vote
- What results are needed to enable the levy order application to proceed
- Where the results will be published
- Names and addresses of where to send the completed voting paper and where to obtain further information

- Voting paper*

Further Things to Do Before Making an Application

- Prepare a plan of spending
- Establish mechanisms for accounting to levy payers

Section 2

Making the Application

A. Information and Evidence Required to Satisfy the Minister that a Levy Order can be Made

The Act requires that a levy order must be recommended to the Governor-General no later than 12 months after a referendum is conducted. To leave enough time for the Minister to consider an application, have a levy order drafted, and obtain Cabinet approval, you should apply to the Minister for a levy within three months after the closing date of the referendum. Failure to have all the requirements completed within 12 months will mean your organisation has to hold another referendum. [See sections 4, 5(2)(aa)]

The Act forbids the making of a levy order unless the Minister is satisfied that the proposal complies with each and every matter set out in the Act, in particular section 5(2) matters. Some of these matters may be within the Minister's personal knowledge, but most of them are matters about which you will have to provide information so that the Minister may be satisfied.

These matters have already been discussed under "Satisfying the Minister on Section 5 Matters" (page 2), "Consultations" (page 4), and "Plan to Conduct a Support Referendum" (page 7).

Information that must be supplied is listed below:

The industry organisation

1. An application to the Minister made under the organisation's **own seal**, or signed by persons who can show that they have authority to act on its behalf. The application should show that the organisation was a **body corporate** at the time of the referendum. [See section (5(1))]
2. A plan of how the organisation would spend levy funds collected in the first year. This would be a draft budget indicating the expected amount of levy to be collected and the amounts or percentage that will be spent on each category of expenditure. [See section 5(1)(b)]
3. A copy of the organisation's rules. The rules should include the mode of voting at a general meeting, how one becomes and ceases to become a member of the organisation, and the objects for which the organisation is established.
4. A description of the following:
 - the membership of the organisation;
 - how membership compares with the number of levy payers;
 - who is eligible to belong to the organisation and the level of any membership fee;
 - the composition of the organisation's executive council; and
 - how the members of the executive are appointed/elected.

This information is required to help establish that the industry organisation adequately represents levy payers. [See section 5(2)(1)]

Note that the Minister would want all those paying the levy to be consulted on levy spending and have the opportunity to become members of the organisation. If this is not the case the levy is unlikely to be approved.

5. Evidence that you have notified any other groups that also claim to represent the levy payers. Suggestions of possible other groups were included in the Consultations section, page 6. [See section 5(2)(g)(ii)]

Benefits and disadvantages of a compulsory levy

6. An outline of how the uses to which the levy is to be put will be in the interests of the levy payers. [See section 5(2)(i)]
7. A comparison (quantitative, or qualitative if that is not possible) of the likely benefits and costs to the levy payers of the compulsory levy. Include explicit and implicit (opportunity) costs and benefits (e.g., time and energy spent on attending meetings and maintaining records, the certainty that free-riders will be caught up with, more information to levy payers about how the organisation is spending their levy, anticipated rate of return on research and development expenditure etc). [See section 5(2)(j)]

Necessity for a compulsory levy

8. Evidence that a compulsory levy is necessary. [See page 3, and section 5(2)(m)]

Levies on imported produce

9. Is imported produce to be levied? If so, outline:
 - the proposed rate;
 - how that rate compares to the rate on domestic produce;
 - the benefits to importers of paying the levy;
 - the views of importers on the levy; and
 - any relevant international legal obligations (e.g., CER, GATT) relating to the imported commodity to be levied that you are aware of.

[See sections 5(2)(k), 6(2)(c), 6(3), 6(4) and 6(5)]

Consultation

10. Evidence of the consultations that were carried out (dated where possible). Attach letters, newsletters to prospective levy payers, public notices in relevant newspapers and industry journals of intention to impose compulsory levy, evidence of discussion at annual general meetings of the industry, etc.
11. Evidence of the efforts that were made to inform and consult with other affected parties of the proposal for a compulsory levy. Affected parties include alternative industry organisations, and third party levy collectors. Was it made clear to them that they could put their views to the Minister? [See sections 5(2)(a), 5(2)(g)]

The support referendum

12. Evidence about how the support referendum was carried out. [See section 5(2)(aa)]
13. Evidence of publicity, which could consist of information pamphlets, newspaper articles, and notices of meetings held to discuss the proposed levy. [See section 5(2)(ad)]
14. Evidence that potential levy payers were given a reasonable opportunity to participate in the support referendum. Evidence may include the number of potential levy payers sent ballot papers, notification of the referendum in newspapers and advice of where a ballot paper could be obtained, and numbers of people attending meetings to consider the levy proposal. [See section 5(2)(ae)]
15. A copy of the ballot paper containing the description of the levy proposal, voting information section and voting paper. (This would represent evidence of the basis of the referendum.) [See section 5(2)(af)]
16. Results, showing that more than half of the participants in the referendum demonstrated support for the levy on the basis of **both**:
 - numbers of persons; [See section 5(2)(ag)] and

- one of either the production, or area, or value, or things used in connection with the production of the commodity. [See sections 5(2)(ah),(ai),(aj),(ak)]

Remember that participants include potential levy payers who returned incomplete voting papers.

For the second requirement above you must provide evidence that the total amount of production, or value of production, or area of production, or number, quantity or capacity of a thing or things of a specified kind used in connection with the production of the commodity, relating to the *supporters*, was more than half the total amount relating to all the *participants* in the referendum.

17. Evidence that the matters to be specified in the order (pursuant to section 6(1) of the Act) do not differ in any material way from those specified in the ballot paper. [See section 5(2)(am)]

Financial and accounting systems

18. An outline of the mechanisms that the industry organisation has in place for accounting to its levy payers for the ways it has spent levy funds (e.g., regular newsletters, draft budgets sent out to levy payers or published in industry journals, quarterly statements of accounts sent to levy payers, published final accounts in industry journals or sent directly to levy payers, annual general meetings of levy payers, etc). [See section 5(2)(n)]

Other matters

19. Outline any other matters that might be relevant [See section 5(2)(o)]

B. Information on Matters to be Specified in the Levy Order

A levy order is the legal means of putting a levy in place. It is signed by the Governor-General, and sets out the detail of a levy.

The levy order will be drafted by a legal drafter at the request of the Minister. The order will be based on the ballot paper, and will also include other matters not required in the ballot paper. Ultimately the Minister will decide what provisions will be specified in the levy order, but the Minister is likely to be guided by your preferences.

Remember that the Minister cannot progress a levy order which specifies matters under section 6(1) of the Act that are materially different from those on the ballot paper.

Levy applications must address all the matters in section 6, including those that **must** be specified and those that **may** be specified in a levy order.

You can supply information in the application on matters that the levy order should include which were not in the ballot paper, or the Ministry will contact you about what you want. If you do not have any views the drafters will include standard clauses. These matters include:

- The provision to be made for conscientious objectors. [See section 8]
- Provisions for procedures to resolve disputes about whether particular persons should be levy payers, and amounts of levy due. [See section 11]. The levy order needs to specify:
 - how a mediator would be appointed;
 - what the mediator would be paid;
 - the procedures the mediator should follow; and
 - how the costs of mediation are to be met.

You may wish to look at the dispute resolution provisions in other levy orders.

- Provision for the payment of an auditor for a compliance audit. [See section 15(5)]

- What accounts and records should be kept by third party levy collectors, persons primarily responsible for paying the levy, and the industry organisation, and for how long. [See section 14]

Other matters you **may** also have included if you want them are:

- Circumstances under which **late payment** of a levy is allowed. Outline any such circumstances if you wish to use this provision or note that you do not wish it to apply. [See section 6(2)(e)]
- **Penalties** for late payment or nonpayment of levies. Outline any such penalties or note that you do not wish penalties to apply. [See section 6(2)(f)]
- The **making of returns** to the industry organisation to enable it to determine how much the levy payers should pay. **Note that this is the only reason for which returns can be required.** Outline arrangements for the making of returns or note that you do not wish this provision to apply. [See section 6(2)(d)]

Section 3

Requirements of the Organisation after the Levy Order has been Made

Financial Procedures

Decide on the financial procedures to operate the levy accounts. [See section 9]

Renewal of Levy Order

Note that any application to renew the levy order must be made in time for it to be renewed within five years, and that if this does not occur, the levy order will be revoked on its sixth anniversary. [See section 13]

Audits

Note that the industry organisation may request the Minister to have both those primarily responsible for paying the levy and third party levy collectors audited to ensure that they are paying/collecting levies and in the right amounts. [See section 15]

Note that, under specified conditions, the Minister may authorise the audit of the industry organisation to assess its performance in relation to the use of levy funds. [See section 18]

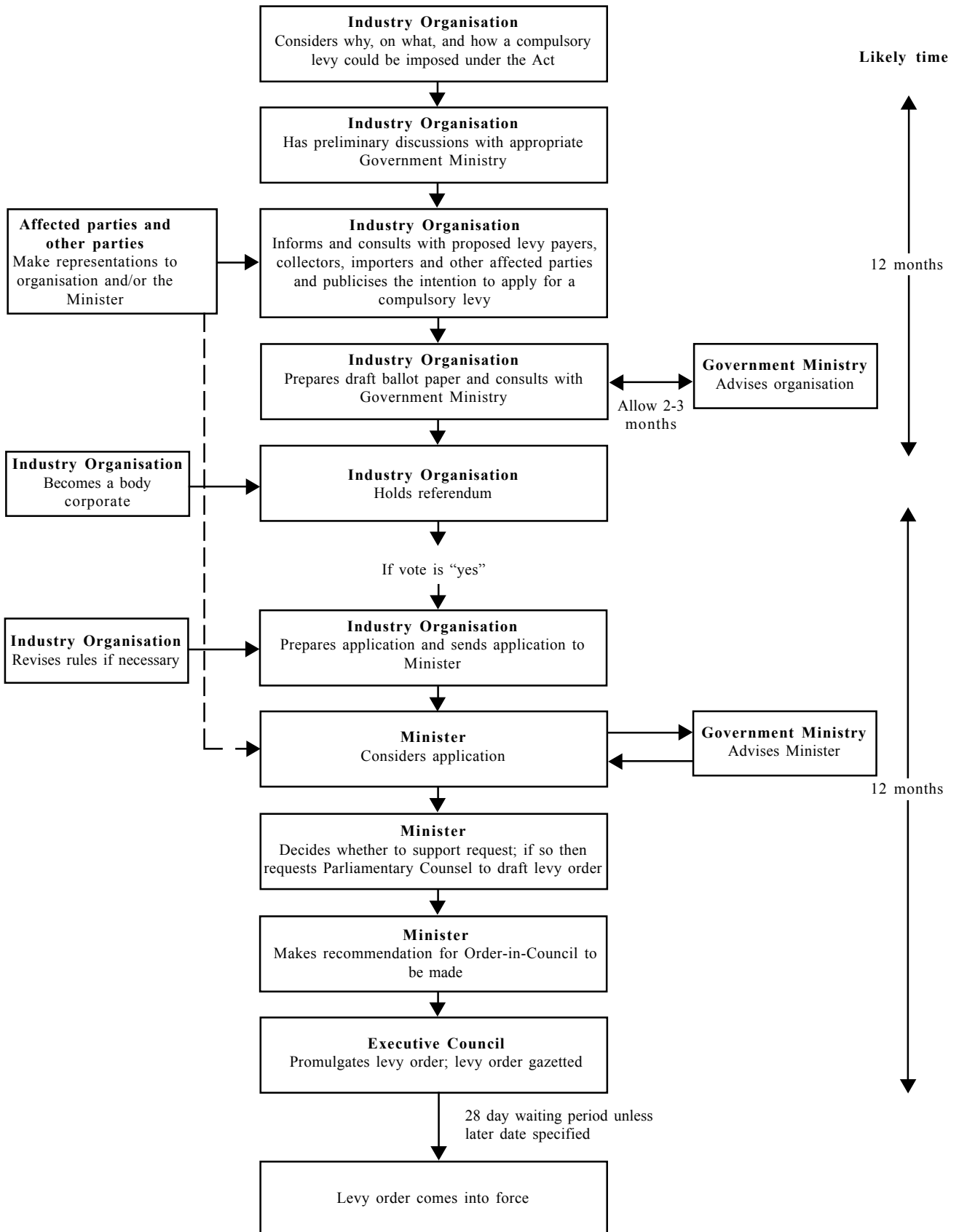
Provision of Annual Report and Audited Annual Accounts

Note that the industry organisation must include audited annual accounts, relating specifically to levy funds collected, in its annual report.

The organisation must:

- give the Minister the annual report to be tabled in Parliament (currently 40 copies are required for this purpose — you should check this with the Minister's office at the time you send in the annual report); and
- take all reasonable steps to get copies of the annual report to all levy payers. [See section 25]

Appendix 1 The Process for Making a Levy Order under the Commodities Levy Act



Appendix **2**

Example Ballot Paper

This example has deliberately been made fairly complicated to show some possible variations. A ballot paper does not have to be so complicated. Imposing a levy on the basis of value of the commodity makes the ballot paper more complicated than using other bases.

Ballot Paper for a Compulsory Levy on Swingleberries to be Paid to the Swingleberry Growers Association of New Zealand Incorporated

This referendum of commercial swingleberry growers is being conducted under the Commodity Levies Act 1990 and the following matters are specified in accordance with the Act.

Description of Levy Proposal

Reason for Referendum

To ascertain the level of support from commercial swingleberry growers for a compulsory levy on swingleberries to fund the activities of the Swingleberry Growers Association of New Zealand Incorporated.

The Organisation

The levy will be payable to the:

Swingleberry Growers Association of New Zealand Incorporated
PO Box 0000
Wellington

Commodity to be Levied

The commodity to be levied is New Zealand grown swingleberries, namely the fruit of the vines of the species *Vinus exampleous*, produced for commercial purposes.

Growers to Pay the Levy

All commercial growers of swingleberries will be primarily responsible for paying the levy. A commercial grower is a person whose business is, or includes, the growing of swingleberries.

Exemption from Paying the Levy

The following persons will be exempt from paying the levy:

- growers whose entire crop of swingleberries is grown on properties certified as organic by an organisation that certifies to standards that meet international requirements.

Basis of the Levy

The levy is to be based on the value of the commodity produced. The levy is to be calculated and ascertained on the basis of the “selling price” of the commodity produced at the first point of sale. The “selling price” is exclusive of GST and is before the deduction of any costs or charges.

Where the commodity is processed before the first point of sale, the “selling price” is the notional price for swingleberries processed by their grower last set by the organisation at its annual general meeting and notified

in the New Zealand Gazette and in a newsletter to all potential levy payers known to the organisation. The notional price is the price that, in the organisation's opinion, a grower could reasonably have expected to receive for the berries if, immediately before they were processed, the grower had sold them to a similar processor situated in the same locality (whether or not there was in fact a similar processor in the same locality).

Where the commodity is exported before the first point of sale, the "selling price" is the FOB value of the commodity as specified in the declaration attached to or forming part of the customs entry made in respect of the commodity exported.

In all other cases the "selling price" is the actual selling price of the commodity at the first point of sale.

Rates of Levy

The levy is to be paid at two rates:

- one rate for swingleberries that are exported before the first point of sale; and
- a second rate for all other swingleberries.

The organisation may fix the initial rates of levy by any means by which it may lawfully make decisions. It is proposed that the GST exclusive initial rates of levy will be:

- 1.5% of the "selling price" for swingleberries that are exported before the first point of sale; and
- 1% of the "selling price" for all other swingleberries.

The initial rate of levy will be effective from the time that the organisation notifies the rate through to the end of that levy year. A levy year refers to the 12 months ending 30 June. At any annual general meeting, the organisation may alter the rates for the following levy year. All levy payers will be entitled to attend annual general meetings and vote on levy rates.

Maximum Rates of Levy

The GST exclusive maximum rates of levy will be:

- 2% of the "selling price" for swingleberries that are exported before the first point of sale; and
- 1.5% of the "selling price" for all other swingleberries.

Notification of Rates of Levy

As soon as practicable after fixing the rates of levy for any levy year, the organisation shall notify the rates, and the levy year to which they relate, in the New Zealand Gazette, in a newsletter to all potential levy payers known to the organisation, and by means of a letter to each collection agent.

Organisation to Spend Levy

The organisation shall spend or (pending its expenditure) invest all levy money paid to it.

Use of Levy

The general purposes for which the organisation is to spend the levy are:

- product research and development;
- market research and development;
- promotion of swingleberries;
- education; and
- day to day administration of the organisation.

The levy will not be spent on any commercial or trading activity.

Sometimes the export levy rate may be higher than the other rate. When that happens, the “extra” levy collected will be spent on the development and promotion of swingleberries in export markets.

Consultation on how Levy Money is to be Spent

At least once every 12 months, the organisation shall consult growers known to it on how the levy money is to be spent. Consultation will be by:

- monthly newsletters to all growers whose addresses the organisation has; and
- widely advertised meetings, including meetings in each swingleberry growing area prior to the annual general meeting in each year, and special and annual general meetings.

Conscientious Objectors

Provisions will be made for the payment of levies by conscientious objectors.

How Levy is to be Paid

Growers who process their own swingleberries or export their own swingleberries will pay the levy plus GST directly to the organisation.

- The levy money is to be paid to the organisation on a monthly basis.
- The due date for payment of the levy is the date on which the berries are processed or exported by the grower.
- The latest date for payment of the levy is the 20th day of the month following the month in which the due date occurs.

No levy is payable on swingleberries sold by the grower directly to consumers (e.g., a grower’s own gate sales).

In all other cases, the levy plus GST is to be deducted from payments to growers and paid to the organisation by collection agents. A collection agent means a person whose business is or includes:

- buying swingleberries from their grower for resale, processing or export; or
- selling, processing or exporting swingleberries on behalf of their grower.

Collection agents will collect the levy where they buy swingleberries from their grower (other than through another collection agent), or sell, process or export swingleberries on their grower’s behalf.

Collection agents will pay the levy to the organisation, including any GST on the levy and less any collection fee.

- Collection agents are to pay the levy money to the organisation on a monthly basis.
- The due date for payment of the levy is the date that the berries are purchased by the collection agent, or sold, processed, or exported by the collection agent on behalf of their grower.
- The latest date for payment of the levy is the 20th day of the month following the month in which the due date occurs.

Collection Fee

Collection agents may deduct a fee of 10% plus GST (if any) of the GST exclusive amount of the levy collected.

Information Retention

Growers of swingleberries and collection agents shall keep, and retain for at least seven years after the date of payment of the levy to the organisation, the following information in respect of each consignment of swingleberries:

- the quantity sold, purchased, exported or processed;
- the name of the grower, purchaser, exporter or processor;
- the price received or paid, or value placed on the commodity;
- the amount of levy collected and paid to the organisation; and
- the amount of the collection fee (if any).

Confidentiality of Information

People or organisations who gather information as a result of a levy order based on this levy proposal are not to divulge those details unless required to by law.

This does not affect or prevent:

- the use and disclosure of such information for statistical or research purposes provided the information will not be published in a form that can identify any individual; or
- the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
- the giving of evidence in any legal proceedings taken:
 - (i) under or in relation to the levy Order; or
 - (ii) in relation to this Order, under or in relation to the Commodity Levies Act 1990; or
- the disclosure to, and use of any such information by, the organisation's returning officer to determine the voting entitlements and to count the votes of persons primarily responsible for paying the levy.

Notice of Result

All growers known to the organisation will be notified, by means of a newsletter, of the result as soon as practicable after the results are known to the organisation.

Returning Officer

The Returning Officer is:

Ballot Counting
Chartered Accountants
PO Box 00 000
Wellington

Voting Information Section

Who is Entitled to Vote

- All commercial swingleberry growers in New Zealand are entitled to vote.
- If you are an individual person, a company or a trust, you have one vote. Individual persons, companies, and trusts owning more than one property have one vote only. If you are in a partnership, each partner has one vote, but only for their share of the swingleberries produced by the partnership. Each partner should cast a vote. Please phone 0800 000 0000 to request enough ballot papers so that each partner gets one.

Voting

- A voting paper is attached for commercial swingleberry growers to record their vote on whether they agree or disagree with the imposition of a compulsory levy on the commercial production of swingleberries in New Zealand.
- The result will be determined by two factors:
 - the “YES” votes must equal more than 50 percent of all votes cast; **and**
 - the total value of swingleberries sold by the commercial growers who voted “YES” must equal more than 50 percent of the total value of swingleberries sold by all voters.
- Where a voting paper is returned to the returning officer not completed or completed incorrectly it will be treated as being a “NO” vote.

Deadline for Returning the Attached Voting Paper

- The voting paper must be received by the returning officer no later than 5:00pm on Friday 1 November 1996.
- Voting papers received after 5:00pm on Friday 1 November 1996 will not be used to calculate the final result.

Information from the Voting Paper

- The information contained on voting papers returned to the returning officer before 5:00pm on Friday 1 November 1996 will be used by the returning officer to ascertain the level of support from commercial swingleberry growers for a compulsory levy on swingleberries to fund the activities of the Swingleberry Growers Association of New Zealand Incorporated.
- The information will be destroyed by the returning officer immediately upon the levy order being confirmed by Act of Parliament, or upon this referendum failing to obtain the support of voters.
- The information supplied in the voting paper will be provided to the organisation for statistical and research purposes. The information will be supplied to the organisation in a form that does not identify any individual grower.

Returning Officer

- The Returning Officer is:
 - Ballot Counting
 - Chartered Accountants
 - PO Box 00 000
 - Wellington

For Further Information

- If you have any queries please contact:
 - Swingleberry Growers Association of New Zealand Inc
 - PO Box 0000
 - Wellington
 - Free-phone 0800 000 000

Swingleberry Growers Association of New Zealand Incorporated Levy Referendum

Ballot paper number _____

Voting Paper

Please complete the following questions and return this voting paper to the Returning Officer in the addressed envelope enclosed by 5:00pm Friday 1 November 1996.

**Note that a voting paper not fully completed or completed incorrectly
will be treated as being a NO vote.**

Please answer **question 1** and both parts of **question 2**:

1. Do you support a compulsory levy on swingleberries? Yes No
(please mark one box only)
2. What was the total value of sales of swingleberries, and/or the pre-processed value of swingleberries processed prior to being sold, grown in the year ending 31 October 1996?
 - (a) swingleberries that were exported before sale \$NZ _____ FOB
 - (b) all other swingleberries \$NZ _____

NB Partners — you can only vote in relation to your partnership share, e.g., 50 % partner votes for 50 % of value produced

(Answer both parts — write nil if this is applicable)

DECLARATION BY VOTER

Orchard trading name _____

Voter's name _____

(Individual, company, partner, trust, other)

Each commercial grower of swingleberries is entitled to one vote. [See "Who is Entitled to Vote" in the Voting Information Section]

I hereby declare that:

I either represent the individual person, company or trust who/that is named as the voter above and I am authorised to cast this vote, or am in a partnership and I have voted for my share of the value of swingleberries produced by my orchard; and

I am currently in the business of growing swingleberries; and

my orchard is not certified as organic by an organisation that certifies to internationally recognised organic standards; and

the information supplied is true and correct to the best of my knowledge.

Signed: _____

Name: _____ Date: _____

Privacy Act 1993

The Swingleberry Growers Association of New Zealand Incorporated, of PO Box 0000, Wellington, advises that the information in this voting paper is being collected to satisfy the requirements of Part I of the Commodity Levies Act 1990. The supply of the information is voluntary. But, without it, your vote cannot be used towards seeking approval of a levy order. The information will be destroyed by the returning officer immediately upon the levy order being confirmed by Act of Parliament, or upon this referendum failing to obtain the support of voters.