



Commodity Levies (Apples and Pears) Order 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 17th day of December 2018

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture made in accordance with sections 5 and 6 of that Act.

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Order

1 Title

This order is the Commodity Levies (Apples and Pears) Order 2018.

2 Commencement

This order comes into force on 17 January 2019.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

apple means any fruit of any species of the genus *Malus*, and any variety of those species

collection agent means a person whose business is or includes—

- (a) buying apples or pears from a grower for resale or export; or
- (b) selling or exporting apples or pears on behalf of a grower

grower means the occupier of land—

- (a) that is used in any levy year for growing apples or pears; and
- (b) from which there was harvested at least 1,000 kilograms of apples or pears (or a combination of apples and pears) during the 12 months immediately before the commencement of that levy year

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

levy money means the money paid under this order as a levy

levy year means,—

- (a) for the first levy year, the period starting on 17 January 2019 and ending at the close of 31 October 2019; and
- (b) for each subsequent levy year, the period of 12 months that begins on 1 November and ends at the close of 31 October

mediator means a person appointed under clause 23 to resolve a dispute

nashi pear means any fruit of—

- (a) the species *Pyrus pyrifolia*; or
- (b) any plant that is a hybrid of that species and the species *Pyrus ussuriensis*

NZAPI means the industry organisation known on the commencement of this order as New Zealand Apples and Pears Incorporated

occupier means—

- (a) a person who has the right to occupy land under a tenancy granted for a term of 12 months or more; or
- (b) if paragraph (a) does not apply, the owner of the land

pear means any fruit of any species of the genus *Pyrus* (including nashi pears).

4 Levy imposed

- (1) A levy is imposed on all apples and pears grown in New Zealand by growers and—
 - (a) sold for consumption as whole fresh fruit; or
 - (b) sold for resale as whole fresh fruit; or
 - (c) exported as whole fresh fruit.
- (2) The levy is payable to NZAPI.

*Payment of levy***5 Growers primarily responsible for paying levy**

The grower of apples or pears is primarily responsible for paying the levy on the fruit.

6 Responsibility of collection agents to pay levy

- (1) Despite clause 5, a collection agent must pay the levy on any apples or pears that the collection agent—
 - (a) buys from a grower (other than through another collection agent); or
 - (b) sells on a grower's behalf; or
 - (c) exports on a grower's behalf.
- (2) A collection agent who has paid the levy in accordance with this clause may recover from the grower the total amount of—
 - (a) the levy; and
 - (b) any GST paid on the levy.
- (3) The collection agent may recover the total amount—
 - (a) by deducting it from any amount the collection agent owes the grower; or
 - (b) as a debt due to the collection agent from the grower.
- (4) A collection agent who pays the levy may deduct from the payment a collection fee of—
 - (a) not more than 4% of the amount of the levy (exclusive of GST); and
 - (b) any GST payable on the fee.

*Rate of levy***7 Levy to be fixed at single rate**

A single rate of levy must be fixed for all apples and pears.

8 Basis of calculation of levy

The levy on apples and pears payable in a levy year must be calculated on the basis of the number of kilograms of fruit sold or exported in that year.

9 Maximum levy rate

The maximum levy rate is 1.5 cents per kilogram of apples or pears (exclusive of GST).

10 Fixing of levy rate

- (1) The levy rate for the first levy year is 1.25 cents per kilogram of apples or pears (exclusive of GST).

- (2) NZAPI must fix the levy rate for each subsequent levy year—
 - (a) at an annual general meeting; or
 - (b) at a special general meeting called for that purpose.
- (3) Growers are entitled to—
 - (a) attend the meeting; and
 - (b) vote on the levy rate.

11 Previous rate to apply

If NZAPI does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate last fixed under clause 10.

12 Notification of levy rate

- (1) NZAPI must notify a levy rate and the year to which it applies in *Pipfruit Newz* as soon as practicable after fixing the rate.
- (2) If *Pipfruit Newz* ceases to be published, NZAPI must notify the levy rate in—
 - (a) any publication that replaces it; or
 - (b) if no publication replaces it, the *Gazette*.

Time for payment of levy

13 When levy payable

- (1) The due date for payment of any levy is,—
 - (a) for apples or pears sold in New Zealand by or on behalf of a grower, the date of sale;
 - (b) for apples or pears exported by or on behalf of a grower, the earlier of—
 - (i) the date of sale; and
 - (ii) the date on which the fruit is loaded on an international carrier for export.
- (2) However, the due date for payment of any levy is,—
 - (a) for apples or pears sold by a grower to a collection agent who resells the fruit in New Zealand, the date of sale by the collection agent;
 - (b) for apples or pears sold by a grower to a collection agent who exports the fruit, the earlier of—
 - (i) the date of sale by the collection agent; and
 - (ii) the date on which the fruit is loaded on an international carrier for export.
- (3) The last date for payment of the levy is 60 days after the due date for payment.

14 Additional levy payable if levy not paid in time

- (1) If any amount of the levy has not been paid by the close of the last day for payment (the **original amount**), the following amounts of additional levy must also be paid:
 - (a) 5% of the original amount; and
 - (b) 2% of any part of the original amount that remains unpaid, for each month that the part remains unpaid after the latest date for payment.
- (2) Any additional levy imposed by subclause (1) that remains unpaid is not itself subject to subclause (1).

*Expenditure of levy money by NZAPI***15 Levy money must be spent by NZAPI or subsidiary**

NZAPI, or any subsidiary of NZAPI, must—

- (a) spend all levy money paid to NZAPI; and
- (b) invest all levy money until it is spent.

16 Purposes for which levy money may be spent

NZAPI, or any subsidiary of NZAPI, may spend levy money for the following purposes relating to apples, pears, or growers:

- (a) product research and development, including the development of new varieties:
- (b) production research and development:
- (c) market research and development, including the development of access to markets:
- (d) attracting people to, retaining people in, and developing people for the apple and pear industry:
- (e) biosecurity activities, including activities to protect the apple and pear industry from biosecurity risk:
- (f) education and training:
- (g) provision and application of technology:
- (h) promotion of apples and pears:
- (i) quality assurance programmes:
- (j) development of a central registration system and database:
- (k) development and maintenance of an industry Internet site:
- (l) day-to-day administration of NZAPI:
- (m) representation of the views of growers.

17 Consultation on spending levy money

- (1) NZAPI must consult growers on how it proposes to spend levy money—
 - (a) at its annual general meeting; or
 - (b) at any special general meeting called for the purpose.
- (2) NZAPI must—
 - (a) give growers adequate notice of an annual general meeting or a special general meeting at which the spending of levy money is to be discussed; and
 - (b) allow growers at the meeting to speak on all matters relating to the spending of levy money.

*Information and record-keeping requirements***18 Confidentiality of information**

- (1) No officer, employee, or agent of NZAPI may disclose any information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) Subclause (1) does not prevent the disclosure of information—
 - (a) to another officer, employee, or agent of NZAPI; or
 - (b) with the consent of the person who provided the information, and of every identifiable person to whom it relates; or
 - (c) if the information is in a form that does not identify any person,—
 - (i) for statistical or research purposes; or
 - (ii) for the purpose of communicating with growers; or
 - (d) if the disclosure is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
 - (a) enforcing this order, including collection of the levy; or
 - (b) complying with section 17 or 25 of the Act; or
 - (c) giving evidence in any legal proceedings taken under or in relation to this order.

19 Returns to be provided to NZAPI

- (1) NZAPI may request, in writing, from the following persons any information that NZAPI reasonably requires to determine the amount of any levy payable:
 - (a) a grower:
 - (b) a collection agent:

- (c) a person who exports apples or pears from New Zealand.
- (2) The information must be provided to NZAPI in writing as soon as is reasonably practicable, but no later than 30 days, after the request is received.

20 Records

- (1) A grower must, for every levy year, keep records of—
 - (a) all matters that the grower provides information about under clause 19; and
 - (b) each amount of levy that the grower pays to NZAPI, and the date of payment; and
 - (c) the number of kilograms of apples or pears to which the levy applies that the grower—
 - (i) sells for consumption or resale in New Zealand;
 - (ii) exports or sells for export.
- (2) A collection agent must, for every levy year, keep records of—
 - (a) all matters that the collection agent provides information about under clause 19; and
 - (b) each amount of levy that the collection agent pays to NZAPI, and the date of payment; and
 - (c) the number of kilograms of apples or pears to which the levy applies that the collection agent—
 - (i) buys from each grower to resell for consumption or further resale in New Zealand;
 - (ii) resells for consumption or further resale in New Zealand (after purchase from each grower);
 - (iii) buys from each grower to export or to resell for export;
 - (iv) exports or resells for export (after purchase from each grower);
 - (v) sells on behalf of each grower for consumption or resale in New Zealand;
 - (vi) exports on behalf of each grower, or sells on behalf of each grower for export; and
 - (d) the full name and contact details of each grower referred to in paragraph (c).
- (3) A grower or collection agent must record weights separately for each type of transaction specified in subclauses (1)(c) and (2)(c), and must record separately the weights for apples and for pears.
- (4) A grower or collection agent must retain the records for at least 7 years after the end of the levy year to which the records relate.
- (5) NZAPI must, for every levy year, keep records of—

- (a) each amount of levy money paid to it and, in relation to each amount,—
 - (i) the date on which it was received; and
 - (ii) the person who paid it; and
 - (b) how and when NZAPI, or any subsidiary of NZAPI, invested levy money; and
 - (c) how and when NZAPI, or any subsidiary of NZAPI, spent levy money.
- (6) NZAPI must retain its records for at least 7 years after the end of the levy year to which the records relate.
- (7) This clause does not require any person to keep a nil record.

Miscellaneous

21 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to NZAPI.

22 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Act is to be remunerated by NZAPI at a rate determined by the Minister of Agriculture after consultation with NZAPI.

Mediation of disputes

23 Appointment of mediators

- (1) This clause applies to any dispute about—
- (a) whether a person is required to pay a levy; or
 - (b) the amount of levy payable.
- (2) Any party to a dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked under subclause (2), the President (or a person authorised by the President) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
- (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 30.

24 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.

- (2) If the parties to the dispute cannot agree on the mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (or a person authorised by the President) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator any amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

25 Conference to resolve dispute

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

26 Conference to be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 27 applies.

27 Representatives

A mediator may allow a representative of any party to a dispute to attend a conference if the mediator is satisfied that it is appropriate to do so in all the circumstances.

28 Right to be heard

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every representative of a party allowed by the mediator to attend the conference.

29 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference to verify the evidence by statutory declaration.

30 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the dispute is not resolved at a conference; or

- (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not the parties confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

31 Costs of mediation

Each party to a dispute must pay its own costs in relation to the mediation.

32 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 30 may appeal to the District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the decision is made; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the time and place for the hearing of the appeal; and
 - (b) notify the time and place to the appellant and the other parties to the dispute; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on 17 January 2019. It imposes a levy on apples and pears grown in New Zealand and sold or exported as whole fresh fruit. The levy is paid to New Zealand Apples and Pears Incorporated.

This order replaces the Commodity Levies (Pipfruit) Order 2012, which was revoked at the close of 28 October 2018. Unlike the levy imposed by that order, the levy imposed by this order applies to nashi pears.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2019, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act. If this order is confirmed, it will be revoked at the close of 16 January 2025 (unless it is revoked earlier or extended under section 13(2) of the Commodity Levies Act 1990).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 20 December 2018.

This order is administered by the Ministry for Primary Industries.