



Commodity Levies (Kiwifruit) Order 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 20th day of November 2017

Present:

Her Excellency the Governor-General 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 after meeting the requirements in sections 5 and 6 of that Act.

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Order

1 Title

This order is the Commodity Levies (Kiwifruit) Order 2017.

2 Commencement

This order comes into force on 27 February 2018.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

Director-General means the Director-General of the Ministry for Primary Industries

exporter means a person who exports kiwifruit for sale

grower means a person whose business is or includes growing kiwifruit

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

kiwifruit means any fruit of a plant of the genus *Actinidia* other than the species *Actinidia arguta*

levy means the levy imposed by clause 4

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

levy year means—

- (a) the period that begins on 27 February 2018 and ends on 31 December 2018; and
- (b) for each subsequent year, a period of 12 months that begins on 1 January and ends on 31 December

mediator means—

- (a) a person appointed under clause 23; and
- (b) in relation to a particular dispute, the mediator appointed to resolve the dispute

NZKGI means New Zealand Kiwifruit Growers Incorporated

tray equivalent means 3.6 kg of kiwifruit.

Levy imposed

4 Levy imposed

- (1) A levy is imposed on kiwifruit grown in New Zealand that is exported to any place other than Australia.
- (2) The levy is payable to NZKGI.

Calculation and payment of levy

5 Basis for calculation of levy

The levy must be calculated on the basis of cents per kilogram of kiwifruit—

- (a) at the point of export (being the point at which kiwifruit is loaded on board a ship or an aircraft for export); or
- (b) at the point at which the fruit is graded and sorted for export.

6 Responsibility for payment of levy

- (1) The grower is the person primarily responsible for paying the levy.
- (2) However, the exporter must pay the levy to NZKGI.

7 Recovery of levy from grower by exporter

An exporter may recover the amount of any levy paid, and any GST payable on it,—

- (a) from the grower as a debt due to the exporter by the grower; or
- (b) by deducting the amount from the exporter's payment to the grower, if the exporter buys kiwifruit directly from the grower or exports kiwifruit on the grower's behalf.

8 Collection fee must not be charged

The exporter is not entitled to charge NZKGI a collection fee for paying or recovering any levy.

9 Conscientious objectors

A person who objects on conscientious or religious grounds to paying the levy in the manner provided for in this order may pay the equivalent amount to the Director-General, and the Director-General must pay the amount to NZKGI.

10 When levy payable

- (1) The due date for payment of a levy to NZKGI is the day the kiwifruit is loaded on board a ship or aircraft for export.
- (2) The latest date for payment of the levy is the 60th day after the due date for payment.

11 Additional levy payable if levy not paid in time

If any amount of the levy has not been paid by the close of the latest date for payment, in addition to that amount (the **original unpaid amount**) NZKGI must also be paid—

- (a) 5% of the original unpaid amount; and
- (b) for each subsequent calendar month, an additional 2% on any part of the original unpaid amount that remains unpaid.

12 Returns

- (1) Every levy payment must be accompanied by a completed return in a form approved by NZKGI.
- (2) The return must include—
 - (a) the quantity of kiwifruit exported; and
 - (b) the date or dates on which the kiwifruit was exported; and
 - (c) the amount of levy paid per kilogram, or tray equivalent, of kiwifruit exported on behalf of each grower; and
 - (d) the name of the grower or growers of the kiwifruit.

Fixing and notification of levy rate

13 Fixing of levy rate

- (1) The levy on kiwifruit for the first levy year is 0.28 cents per kilogram of kiwifruit exported.
- (2) For each subsequent levy year, NZKGI must fix the levy rate or rates at its annual general meeting.
- (3) Growers who are not members of NZKGI must—
 - (a) be allowed to attend the meeting; and
 - (b) be given speaking rights on the levy rate.
- (4) If NZKGI does not fix the levy rate before the start of a levy year, the levy rate for the year is the last rate fixed under this clause.

14 Levy payable at single rate or different rates

A single rate or different rates of levy may be fixed for different classes, descriptions, or kinds of kiwifruit.

15 Maximum levy rate

The maximum levy rate is 0.42 cents per kilogram of kiwifruit exported.

16 Notification of levy rate

As soon as practicable after the rate of levy for a levy year has been fixed under clause 13(2), NZKGI must notify it—

- (a) in the *Gazette*; and
- (b) in the NZKGI newsletter or in any other publication or document that is sent to all growers and exporters known to NZKGI.

Record keeping and confidentiality of information

17 Records

- (1) A grower must keep records, for each levy year, of—
 - (a) the quantity of kiwifruit produced and sold; and
 - (b) the name of the packhouse or exporter that the grower uses; and
 - (c) the amount of levy money paid to NZKGI or the Director-General by the grower, or by an exporter on the grower's behalf; and
 - (d) the quantity of kiwifruit to which the levy paid relates.
- (2) An exporter must obtain and keep records, for each levy year, of—
 - (a) the quantity of kiwifruit exported to any place other than Australia; and
 - (b) the amount of levy money paid to NZKGI or the Director-General on behalf of each grower; and

- (c) the name of each grower of kiwifruit exported; and
 - (d) the quantity, values, and classes of kiwifruit exported; and
 - (e) a copy of every Customs declaration in respect of the kiwifruit exported.
- (3) NZKGI must keep records, for each levy year, of the following:
- (a) each amount of levy money paid to it; and
 - (b) for each amount of levy money,—
 - (i) the date on which the money was received; and
 - (ii) the name of the person who paid the money; and
 - (c) for all levy money paid to it, how the money has been spent or invested.
- (4) Records must be kept for at least 2 years after the levy year to which the records relate.
- (5) Every grower and exporter who is required to keep records must provide NZKGI with information from the records as soon as is reasonably practicable after receiving a request from NZKGI for the information.

18 Confidentiality of information

- (1) No officer or employee of NZKGI or any other person may disclose any information obtained under this order unless—
- (a) the person to whom it is disclosed is an officer or employee of NZKGI; or
 - (b) the person who provided the information and every identifiable person to whom it relates consents to its disclosure; or
 - (c) the disclosure is required by law; or
 - (d) the disclosure is for the purposes of—
 - (i) assisting with the collection of the levy; or
 - (ii) complying with section 17(1) or 25 of the Act; or
 - (iii) determining the voting entitlements or counting the votes in relation to levy matters; or
 - (iv) giving evidence in legal proceedings relating to this order or the Act.
- (2) Subclause (1) does not prevent NZKGI from disclosing or using any information for statistical or research purposes if the information is in a form that does not identify any individual.

Spending of levy money by NZKGI

19 Levy money must be spent by NZKGI

NZKGI must—

- (a) spend all the levy money paid to it; and

- (b) invest all levy money until it is spent.

20 Purposes for which levy money may be spent

- (1) NZKGI must not spend levy money on commercial or trading activities.
- (2) NZKGI may spend levy money for any or all of the following purposes relating to kiwifruit or growers:
 - (a) research, including market research:
 - (b) product development:
 - (c) export market development:
 - (d) quality assurance:
 - (e) education and information:
 - (f) generic promotions:
 - (g) grower representation:
 - (h) day-to-day administration of NZKGI.

21 Consultation on spending levy money

NZKGI must consult growers on how it proposes to spend levy money by—

- (a) notifying growers, in the NZKGI newsletter or by any other means, of its general meetings; and
- (b) circulating, before its annual general meeting or any other special meeting called to discuss the matter, a draft budget and plan that shows how the money is to be spent; and
- (c) discussing the draft budget and plan with growers at its annual general meeting or any other special meeting called to discuss the draft budget and plan and approving them at the meeting.

Audits

22 Remuneration of auditors

A person appointed as an auditor under section 15 of the Act in relation to this order must be remunerated by NZKGI at a rate determined by the Minister of Agriculture after consultation with NZKGI.

Mediation of disputes

23 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.

- (2) Any party to the 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, 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 the dispute by agreement; or
 - (b) the mediator resolves the dispute under clause 30.

24 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed to by the parties to the dispute.
- (2) If the parties to a 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 that must 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 the amount or amounts fixed and specified under subclause (2).

25 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by post or email; and
- (c) preside at the conference.

26 Conferences to be held in private

Subject to clause 27, only the parties to a dispute may attend a conference with the mediator.

27 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator 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 with a mediator:

- (a) each party to the dispute; and

- (b) each 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,—
 - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference of the parties to a dispute 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 mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator 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 decision of the mediator.

31 Costs of mediation

Each party 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 mediator's decision 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 date on which the mediator makes the decision; or
 - (b) within any longer period that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the date, time, and place for the hearing of the appeal; and
 - (b) notify the appellant and the other parties to the dispute of the date, time, and place; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Each 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 process for the enforcement of the mediator's decision.

Revocation

33 Revocation of Commodity Levies (Kiwifruit) Order 2012

The Commodity Levies (Kiwifruit) Order 2012 (SR 2012/24) is revoked.

Martin Bell,
for 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, which comes into force on 27 February 2018, imposes a levy on kiwifruit grown in New Zealand that is exported to any place other than Australia. The levy is payable to New Zealand Kiwifruit Growers Incorporated (**NZKGI**).

Although the kiwifruit grower is primarily responsible for paying the levy, it is payable by exporters, who can recover the amount of the levy as a debt due from growers. After consulting with growers, NZKGI may spend levy money for purposes, set out in *clause 20*, such as research and grower representation, but must not spend it on commercial or trading activities.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2018, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act. Even if confirmed in that way, under section 13 of the Commodity Levies Act 1990 this order will be revoked at the close of the sixth anniversary of its coming into force, unless it is revoked earlier or extended under section 13(2) of that Act.

This order replaces the Commodity Levies (Kiwifruit) Order 2012.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 23 November 2017.

This order is administered by the Ministry for Primary Industries.