



Commodity Levies (Paeonies) Order 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 17th day of September 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General makes the following order, acting—

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

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Order

1 Title

This order is the Commodity Levies (Paeonies) Order 2012.

2 Commencement

This order comes into force on 19 October 2012.

3 Interpretation

In this order, unless the context requires another meaning,—

collection agent means a person whose business is or includes—

- (a) buying paeonies from commercial growers for sale in New Zealand or overseas; or
- (b) selling paeonies in New Zealand or overseas on behalf of commercial growers

commercial grower means a person who—

- (a) grows paeonies in New Zealand; and
- (b) derives more than \$2,500 from the sale of the person's paeonies in a levy year

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

levy means the levy imposed by clause 5

levy year means—

- (a) a period of 12 months starting on 1 October and ending on 30 September; but
- (b) for the first levy year, the period starting on 19 October 2012 and ending on 30 September 2013

NZPSI means the organisation called the New Zealand Paeony Society Incorporated on 19 October 2012

paeony means cut flowers, buds, leaves, stems, and roots of the genus *Paeonia*

sell includes export for sale

selling price means,—

- (a) for paeonies sold in New Zealand, the commercial grower's farm-gate selling price, exclusive of GST and before deduction of any costs or charges;
- (b) for paeonies sold overseas before export, the actual selling price;
- (c) for paeonies exported to be sold overseas, the free on-board value (FOB value) as specified in the declaration attached to or forming part of the customs entry made for the paeonies.

4 GST

A reference in this order to the payment or recovery of a levy must be read as including the payment or recovery of any GST payable on the levy.

*Imposition and amount***5 Imposition**

A levy is imposed on paeonies grown by commercial growers.

6 Calculation

The NZPSI must calculate the levy on the basis of the selling price of paeonies grown by commercial growers sold in a levy year.

7 Rates

- (1) The NZPSI may set the levy at 2 different rates, as follows:
 - (a) a rate for paeony flowers, buds, leaves, and stems;
 - (b) a rate for paeony roots.
- (2) Neither rate may exceed 2.5% of the selling price.
- (3) The NZPSI must set the actual levy rates for a levy year at either of the following meetings held before the start of the levy year:
 - (a) the annual general meeting;
 - (b) a special general meeting called for the purpose.
- (4) If the NZPSI does not set the actual levy rates for a levy year, the levy rates currently applying continue to apply.
- (5) To avoid doubt, the actual levy rates for the first levy year must be set before the commencement of this order.

8 Notification

- (1) The NZPSI must notify the actual rates—
 - (a) in the *Gazette*; and
 - (b) in as many major metropolitan newspapers as it considers appropriate; and
 - (c) in the NZPSI's newsletter; and
 - (d) by email or post to all commercial growers and collection agents known to the NZPSI.
- (2) The NZPSI must notify the actual rates as soon as practicable after setting them.

*Payment***9 Payee**

The levy is payable to the NZPSI.

10 Payers

- (1) Commercial growers are primarily responsible for paying the levy.
- (2) If a commercial grower uses a collection agent, the agent must pay the levy.
- (3) The collection agent may charge a collection fee of not more than 4% of the levy payable (exclusive of GST) plus the GST payable on the fee by deducting the fee plus GST before paying the levy.
- (4) If the collection agent wishes to recover the levy, the agent must,—
 - (a) if the agent buys the paeonies from the grower,—
 - (i) deduct the amount of the levy from the payment made to the grower for the paeonies; and
 - (ii) provide the grower with information about the amount of levy deducted; or
 - (b) if the agent sells the paeonies on the grower's behalf, recover the amount of the levy as a debt due from the grower.

11 Conscientious objection to payee

If a commercial grower or collection agent objects on conscientious or religious grounds to paying the levy to the NZPSI,—

- (a) the grower or agent must pay the equivalent amount to the Director-General of the Ministry for Primary Industries; and
- (b) the Director-General must pay the amount to the NZPSI.

12 Information to determine payment

- (1) The NZPSI may request a commercial grower or a collection agent to provide it with any information that it reasonably requires in order to determine the levy that the grower or agent must pay.

- (2) The NZPSI must make the request by email or post.
- (3) The grower or agent must provide the information as soon as is practicable.

13 Due and latest dates for payment

Due dates for payment

- (1) If a commercial grower sells the grower's paeonies in New Zealand to anyone other than a collection agent, the due date is the date on which the grower is paid for the paeonies.
- (2) If a commercial grower exports the grower's paeonies, the due date is the earlier of the dates on which the paeonies are—
 - (a) loaded on an international carrier for export:
 - (b) sold overseas.
- (3) If a commercial grower sells the grower's paeonies to a collection agent who sells them in New Zealand, the due date is the date on which the agent sells the paeonies.
- (4) If a commercial grower sells the grower's paeonies to a collection agent who exports them, the due date is the earlier of the dates on which the paeonies are—
 - (a) loaded on an international carrier for export:
 - (b) sold overseas.
- (5) If a collection agent sells a commercial grower's paeonies in New Zealand on behalf of the grower, the due date is the date on which the agent sells the paeonies.
- (6) If a collection agent exports a commercial grower's paeonies on behalf of the grower, the due date is the earlier of the dates on which the paeonies are—
 - (a) loaded on an international carrier for export:
 - (b) sold overseas.

Latest dates for payment

- (7) The latest date for payment of the levy is,—
 - (a) if the levy is payable by a commercial grower, 60 days after the due date:
 - (b) if the levy is payable by a collection agent, the 20th day of the month after the month in which the due date occurs.

*Spending***14 Purposes**

- (1) The NZPSI must spend all levy paid to it for the following purposes:
 - (a) the promotion of paeonies;
 - (b) research into and development of paeonies, their production, their marketing, and their supply chain;
 - (c) education and training about the purposes set out in paragraphs (a) and (b);
 - (d) the provision and application of technology for the purposes set out in paragraphs (a) to (c);
 - (e) the development and maintenance of a central registration system and database of commercial growers;
 - (f) representation of the views of commercial growers;
 - (g) the development and maintenance of an NZPSI website;
 - (h) the day-to-day administration of the NZPSI.
- (2) The NZPSI must not spend the levy on commercial or trading activities.
- (3) The NZPSI must invest the levy until it spends the levy.

15 Consultation

- (1) The NZPSI must, at least once every 12 months,—
 - (a) consult commercial growers on how it proposes to spend the levy in the next levy year; and
 - (b) provide growers with details of how it spent the levy in the previous 12 months.
- (2) For the purposes of subclause (1), the NZPSI must—
 - (a) hold local meetings at least 1 month before its annual general meeting; and
 - (b) present details of how it proposes to spend the levy in the next levy year for approval at its annual general meeting.
- (3) The NZPSI must—
 - (a) advertise each local meeting in the NZPSI newsletter; and
 - (b) by email or post, invite all commercial growers and collection agents known to the NZPSI to attend its annual general meeting.

*Records***16 Commercial growers**

- (1) A commercial grower must collect the following information for each levy year:
 - (a) the selling price of paeonies sold by or on behalf of the grower:
 - (b) the names and addresses of the collection agents who—
 - (i) bought paeonies from the grower; or
 - (ii) sold paeonies on behalf of the grower.
- (2) The grower must keep the information for at least 4 years after the date on which the levy is paid to the NZPSI.

17 Collection agents

- (1) A collection agent must collect the following information for each levy year:
 - (a) the names and addresses of commercial growers from whom the agent bought paeonies:
 - (b) the selling price of the paeonies bought from each commercial grower:
 - (c) the names and addresses of commercial growers on whose behalf the agent sold paeonies:
 - (d) the selling price of the paeonies sold on behalf of each commercial grower:
 - (e) the amount of the levy collected and paid to the NZPSI:
 - (f) the amount of collection fees deducted by the agent.
- (2) The collection agent must keep the information for at least 4 years after the date on which the levy is paid to the NZPSI.

18 NZPSI

- (1) The NZPSI must collect the following information for each levy year:
 - (a) the amount of each levy paid to it:
 - (b) when the levy was paid:
 - (c) who paid the levy:
 - (d) how it spent or invested all levy paid to it.
- (2) The NZPSI must keep the information for at least 4 years after the date on which each levy is paid to the NZPSI.

19 Confidentiality

- (1) This clause applies to information obtained—
 - (a) under the Commodity Levies Act 1990 in relation to this order; or
 - (b) under or because of this order.
- (2) The NZPSI may disclose the information only for the following purposes:
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990;
 - (b) the production of a statement under section 25 of the Commodity Levies Act 1990;
 - (c) the giving of evidence in legal proceedings taken under or in relation to this order;
 - (d) determining the voting entitlements of members of the NZPSI;
 - (e) counting the votes of members of the NZPSI;
 - (f) statistical and research purposes that do not involve the disclosure of personal information;
 - (g) invoicing for and collecting levies.
- (3) An officer or employee of the NZPSI may disclose the information only for the purposes set out in subclause (2)(a) to (c).
- (4) A person involved in collecting the levy may disclose the information only to an officer or employee of the NZPSI.

*Disputes***20 Appointment of mediators**

- (1) This clause applies to a dispute concerning—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) A 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 it by agreement; or
 - (b) the mediator resolves the dispute under clause 27.

21 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a 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 the amount or amounts fixed and specified under subclause (2).

22 Conferences under control of mediators

A mediator must—

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

23 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.

24 Conferences to be held in private

Only the parties to a dispute, the mediator, and representatives the mediator allows to attend may attend a conference organised by the mediator.

25 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.

26 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally 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 any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

27 Mediators may resolve disputes 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) 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.

28 Cost of mediation

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

29 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal—
 - (a) within 28 days of the making of the decision concerned; or
 - (b) within any longer time 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 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) 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 any process for the enforcement of the mediator's decision.

Compliance audits

30 Remuneration of auditors

The NZPSI must remunerate a person appointed as an auditor under section 15 of the Commodity Levies Act 1990 at a rate determined by the Minister for Primary Industries after consultation with the NZPSI.

Rebecca Kitteridge,
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 imposes a levy on paeonies grown in New Zealand by commercial growers. The levy is payable to the New Zealand Paeony Society Incorporated.

The order comes into force on 19 October 2012. Under section 13(1) of the Commodity Levies Act 1990, it expires 6 years after it is made, but may be revoked before then.

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Commodity Levies (Paeonies) Order 2012

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 20 September 2012.

This order is administered by the Ministry for Primary Industries.
