



Commodity Levies (Citrus Fruit) Order 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 25th day of November 2019

Present:

Hon Kelvin Davis 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 given in accordance with sections 5 and 6 of that Act.

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Order

1 Title

This order is the Commodity Levies (Citrus Fruit) Order 2019.

2 Commencement

This order comes into force on 24 February 2020.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

citrus fruit means the following fruit and their hybrids:

- (a) grapefruit:
- (b) lemons:
- (c) limes:
- (d) mandarins:
- (e) oranges:
- (f) tangelos

collection agent means a person whose business is or includes—

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

first point of sale, in the case of export for sale, means the earlier of the following:

- (a) when the citrus fruit is loaded on an international carrier for export:
- (b) when the citrus fruit is sold to an overseas buyer

fresh means not intended for processing

grower means a person whose business is or includes growing citrus fruit in New Zealand

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 or payable under this order as a levy

levy rate means the rate fixed under clause 11

levy year means,—

- (a) for the first levy year, the period that begins on 24 February 2020 and ends on 31 March 2021; and
- (b) for each subsequent year (other than the last year), the period of 12 months that begins on 1 April and ends on 31 March; and
- (c) for the last levy year, the period that begins on 1 April 2025 and ends on 23 February 2026

NZCGI means the industry organisation that, on the commencement of this order, was known as New Zealand Citrus Growers Incorporated

processing means doing any of the following to citrus fruit for commercial purposes:

- (a) artificially drying:
- (b) bottling:
- (c) canning:
- (d) evaporating:
- (e) freezing:
- (f) juicing:
- (g) preserving

quarter means the following periods:

- (a) 1 April to 30 June:
- (b) 1 July to 30 September:
- (c) 1 October to 31 December:
- (d) 1 January to 31 March

sale includes export for sale.

Levy imposed

4 Levy on citrus fruit

- (1) This order imposes a levy on citrus fruit grown in New Zealand, including citrus fruit grown for processing.
- (2) The levy must be paid to NZCGI.

Paying levy

5 Growers primarily responsible for paying levy

- (1) Growers are primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

6 Collection agent must pay levy and may recover it from growers

- (1) If a grower uses a collection agent, the agent must pay the levy unless—
 - (a) the grower and NZCGI have agreed in writing that the grower will pay the levy; and
 - (b) the grower has given the agent notice of that agreement by email or post.
- (2) The collection agent may charge a collection fee of not more than 5% of the levy payable (exclusive of GST) plus the GST payable on the fee by deducting the fee plus GST before paying the levy.
- (3) The collection agent may recover the levy on citrus fruit bought from the grower by—

- (a) deducting the amount of the levy from the payment made to the grower for the fruit; and
 - (b) providing the grower with information about the amount of levy deducted.
- (4) The collection agent may recover the levy on citrus fruit sold on the grower's behalf by recovering the amount of the levy as a debt due from the grower.

7 Conscientious objectors

If a grower or collection agent objects on conscientious or religious grounds to paying the levy to NZCGI in the manner provided in this order,—

- (a) the grower or agent may pay the equivalent amount to the Director-General; and
- (b) the Director-General must pay the amount to NZCGI.

8 When levy payable

- (1) The due date for payment of the levy by a grower or collection agent is the date at the first point of sale.
- (2) The latest date for payment of the levy is as follows:
- (a) for payment by a grower, the 20th day of the month after the last month of the quarter in which the due date falls:
 - (b) for payment by a collection agent, the 20th day of the month after the month in which the due date falls.

9 Additional levy for late payment

- (1) If a grower or collection agent does not pay an amount of levy money by the required date, the grower or collection agent must pay NZCGI,—
- (a) for the first month, an additional levy of 10% of the unpaid amount; and
 - (b) for each subsequent month that the amount (or part of the amount) remains unpaid after the required date, an additional levy of 2% of the amount of the unpaid levy.
- (2) Any additional levy imposed by subclause (1) that remains unpaid is not itself subject to subclause (1).

Setting levy rate

10 Basis for calculating levy

NZCGI must calculate the levy payable in a levy year on the basis of the weight in kilograms of citrus fruit at the first point of sale.

11 Levy rates

- (1) NZCGI may set a different levy rate for each of the 4 classes of citrus fruit specified in subclause (2).

- (2) The rates for the first levy year are set as follows (exclusive of GST):

Class of citrus fruit	Rate (cents per kg)
Fresh grapefruit, lemons, and limes	1.0
Fresh mandarins	1.0
Fresh oranges and tangelos	1.0
All citrus fruit intended for processing	0.3

- (3) To change the levy rate for a class of citrus fruit for a later levy year, the rate must be set as follows:
- for a class of fresh fruit, at the annual meeting of the NZCGI product group for that class of citrus fruit;
 - for the class of fruit intended for processing, at the annual NZCGI meeting.

12 Maximum levy rate

The rate must not exceed the following (exclusive of GST):

- for a class of fresh fruit, 3 cents per kg;
- for a class of fruit intended for processing, 1 cent per kg.

13 Fixing levy rate

If NZCGI does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under this clause.

14 Notifying levy rate

- If NZCGI changes a levy rate, it must notify the new rate—
 - in the *Gazette*; and
 - in *The Orchardist* magazine or, if it is no longer published, in any similar publication; and
 - in *Citrus News* or, if it is no longer published, in another industry publication; and
 - by email or post to all growers and collection agents known to NZCGI.
- NZCGI must notify the new rate as soon as practicable after setting it.

Spending levy money

15 NZCGI must spend levy money

NZCGI must—

- spend all levy money paid to it; and
- invest all levy money until it is spent.

16 Purposes for which levy money may be spent

- (1) NZCGI may spend levy paid for all or any of the following purposes to benefit growers:
 - (a) product research and development:
 - (b) protection and improvement of plant health:
 - (c) market research and development:
 - (d) promotion of the citrus fruit industry:
 - (e) quality assurance:
 - (f) education and information:
 - (g) grower representation:
 - (h) day-to-day administration of NZCGI.
- (2) NZCGI must not spend levy money on commercial or trading activities.

17 Consulting on spending levy money

- (1) Each levy year, NZCGI must consult growers on how it proposes to spend levy money.
- (2) NZCGI may use the following methods to consult growers:
 - (a) discussing it at the NZCGI conference and at the annual NZCGI meeting; and
 - (b) providing information in NZCGI newsletters.
- (3) Any individual project of an NZCGI product group with a value of more than \$100,000 (excluding GST) per annum must be approved by growers at an annual meeting or a special meeting of the product group.
- (4) NZCGI must give at least 2 weeks' notice of the following, by email or post, to all growers known to NZCGI:
 - (a) each annual NZCGI meeting:
 - (b) any special general meeting of NZCGI at which levy spending is to be discussed.
- (5) NZCGI must give at least 2 weeks' notice of the following, by email or post, to all growers of the relevant class of citrus fruit who are known to NZCGI:
 - (a) each annual NZCGI meeting:
 - (b) any special general meeting of NZCGI at which levy spending is to be discussed.

*Returns, records, and confidentiality***18 Returns**

- (1) NZCGI may request a grower or collection agent to provide it with any information that it reasonably requires to determine the levy that the grower or agent must pay.
- (2) NZCGI must make the request by email or post.
- (3) The grower or agent must provide the information as soon as practicable.

19 Growers must keep records

- (1) A grower must record, for each levy year, the following information about its leviable citrus fruit:
 - (a) the weight of the fruit at the first point of sale:
 - (b) the amounts of levy the grower paid to NZCGI:
 - (c) the names and addresses of the collection agents that bought citrus fruit from the grower or sold citrus fruit on behalf of the grower.
- (2) The information must be recorded separately for each class of citrus fruit to which a distinct rate of levy applies.

20 Collection agents must keep records

- (1) A collection agent must record the following information for each levy year:
 - (a) the names and addresses of growers from whom the agent bought citrus fruit or on whose behalf the agent sold citrus fruit:
 - (b) the weight of the citrus fruit bought from, or sold on behalf of, each grower:
 - (c) the amount of the levy collected and paid to NZCGI in relation to each grower:
 - (d) the amount of collection fees deducted by the agent in relation to each grower.
- (2) The information must be recorded separately for each class of citrus fruit to which a distinct rate of levy applies.

21 NZCGI must keep records

NZCGI must record the following information for each levy year:

- (a) each amount of levy paid to it:
- (b) when the levy was paid:
- (c) who paid the levy:
- (d) how it spent or invested the levy money.

22 Records must be kept for 2 years

The records required by clauses 19 to 21 must be kept for at least 2 years after the date on which the relevant levy is paid to NZCGI.

23 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) An officer or employee of NZCGI, or any person involved in collecting the levy, must not disclose the information to anyone other than an officer or employee of NZCGI.
- (3) However, NZCGI may disclose the information for the following purposes:
 - (a) producing records or accounts under section 17(1) of the Act:
 - (b) producing a statement under section 25 of the Act:
 - (c) giving evidence in legal proceedings taken in relation to this order:
 - (d) determining the voting entitlements of members of NZCGI:
 - (e) counting the votes of members of NZCGI:
 - (f) statistical and research purposes that do not involve the disclosure of personal information:
 - (g) invoicing for and collecting levies.

*Dispute resolution***24 Appointing mediators**

- (1) This clause applies to a dispute about—
 - (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 31.

25 Remunerating mediators

- (1) A mediator must 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).

26 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 of those matters by email or post; and
- (c) preside at the conference.

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 Conference must 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.

29 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.

30 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 they think desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that they think 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.

31 Mediator 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.

32 Mediation costs

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

33 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision 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 the 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***34 Remunerating auditors**

NZCGI must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consulting NZCGI.

*Revocation***35 Order revoked**

The Commodity Levies (Citrus Fruit) Order 2014 (LI 2014/44) is revoked.

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, which comes into force on 24 February 2020, imposes a levy on citrus fruit grown in New Zealand for commercial purposes.

Citrus fruit growers are primarily responsible for paying the levy. The levy is paid to New Zealand Citrus Growers Incorporated.

Before this order, a levy was imposed on citrus fruit by the Commodity Levies (Citrus Fruit) Order 2014. This order revokes and replaces that order. The revocation does not affect amounts of levy money that became payable under that order before its revocation.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2020, 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 on 23 February 2026 (the day before the sixth anniversary of the date on which it came into force), unless it is 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*: 28 November 2019.

This order is administered by the Ministry for Primary Industries.