



Commodity Levies (Passionfruit) Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 29th day of June 2020

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 in accordance with sections 5 and 6 of that Act.

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Order

1 Title

This order is the Commodity Levies (Passionfruit) Order 2020.

2 Commencement

This order comes into force on 11 August 2020.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent or **agent** means a person whose business is, or includes,—

- (a) buying passionfruit from a grower for processing or for sale in New Zealand or overseas; or
 - (b) selling passionfruit in New Zealand or overseas on behalf of a grower
- commercial grower** or **grower** means a person whose business is, or includes, growing passionfruit for any of the following purposes:
- (a) to sell for consumption as fresh fruit:
 - (b) to sell for resale as fresh fruit:
 - (c) to export as fresh fruit:
 - (d) to sell within New Zealand for processing:
 - (e) to process before sale

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

levy means the levy imposed by clause 5

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

levy year means—

- (a) a period of 12 months starting on 1 January and ending on 31 December; but
- (b) for the first levy year, the period starting on 11 August 2020 and ending on 31 December 2020; and
- (c) for the last levy year, the period starting on 1 January 2026 and ending on 10 August 2026

notional process value means the amount of money (excluding GST and before the deduction of any costs or charges) that, in the opinion of NZPGA, a grower would reasonably expect to pay for the passionfruit had the grower wanted to buy it for processing

NZPGA means The N.Z. Passionfruit Growers Association Incorporated

passionfruit means the fruit of all passionfruit vines of the genus *Passiflora*

price includes the following amounts if NZPGA considers that they should be treated as part of the price:

- (a) any payments made to the commercial grower by the buyer in relation to the sale of the passionfruit:
- (b) the value (as determined by NZPGA) of any goods or services provided—
 - (i) to the grower by the buyer in relation to the sale of the passionfruit; and
 - (ii) free of charge or below market value

processed includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, juiced, pressed, or preserved,—

- (a) whether as whole passionfruit or concentrate, pulp, purée, sauce, or essence; and
- (b) whether alone or with other ingredients

selling price means—

- (a) the price at which the passionfruit is sold at the first point of sale (excluding GST and before costs and charges are deducted); or
- (b) if NZPGA considers that the price referred to in paragraph (a) is not consistent with prevailing market conditions in the commercial grower's locality, the market value that, in the opinion of NZPGA, the buyer would reasonably expect to pay for the passionfruit.

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.

Levy imposed

5 **Levy on passionfruit**

- (1) A levy is imposed on passionfruit grown in New Zealand by commercial growers.
- (2) The levy is payable to NZPGA.

6 **Basis for calculating levy**

- (1) The levy payable in a levy year must be calculated on the basis of the price received at the first point of sale, except where—
 - (a) the passionfruit is exported, in which case the levy will be calculated on the price received by the grower after deduction of all offshore costs (including international freight); or
 - (b) the passionfruit is processed before the first point of sale, in which case the levy will be a percentage of the notional process value.
- (2) A price referred to in subclause (1) is exclusive of GST.

7 **Actual levy rate**

- (1) NZPGA must set the actual levy rate at a single rate.
- (2) The actual levy rate must not exceed 6% of the selling price, notional process value, or the price received by the grower after deduction of all offshore costs (including international freight) that is the basis for the calculation of the levy under clause 6.

- (3) NZPGA must set the actual levy rate for the first levy year in accordance with its rules.
- (4) NZPGA must set the actual levy rate for each later 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.
- (5) If NZPGA does not set the actual levy rates for a levy year, the levy rates currently applying continue to apply.

8 Notifying actual levy rate

- (1) NZPGA must notify the actual levy rate for each levy year—
 - (a) in *The Orchardist*; and
 - (b) by email or post to all collection agents known to NZPGA.
- (2) NZPGA must notify the actual rate as soon as practicable after setting it.

Paying levy

9 Commercial growers primarily responsible for paying the levy

- (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) If the collection agent wishes to recover the levy, the agent must,—
 - (a) if they buy the passionfruit from the commercial grower,—
 - (i) deduct the amount of the levy from the payment made to the grower for the passionfruit; and
 - (ii) provide the grower with information about the amount of levy deducted; or
 - (b) if they sell the passionfruit on the grower's behalf, recover the amount of the levy as a debt due from the grower.

10 No collection fee

A collection agent who pays a levy to NZPGA must not charge a collection fee.

11 Conscientious objection to paying NZPGA

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

- (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 NZPGA.

12 Information to accompany payment to NZPGA

- (1) A payment of the levy by a commercial grower to NZPGA must be accompanied by statements of the following:
 - (a) the selling price or notional process value of the passionfruit to which the payment relates; and
 - (b) the price received by the grower after deduction of all offshore costs (including international freight) for the passionfruit that was exported (if any); and
 - (c) the quantity of passionfruit sold.
- (2) A payment of the levy by a collection agent to NZPGA must be accompanied by statements of the following:
 - (a) the quantity of passionfruit purchased; and
 - (b) the purchase price of the passionfruit; and
 - (c) the amount of levy the agent collected from each grower.
- (3) NZPGA may request a commercial grower or a collection agent to provide it with any information that it reasonably requires to determine the levy that the grower or agent must pay.
- (4) NZPGA must make the request by email or post.
- (5) The commercial grower or collection agent must provide the information as soon as is practicable.

13 Due dates for payment

- (1) If a commercial grower sells their passionfruit in New Zealand to anyone, including a collection agent, the due date is the date on which the grower sells the passionfruit.
- (2) If a collection agent sells a commercial grower's passionfruit in New Zealand on behalf of the grower, the due date is the date on which the agent sells the passionfruit.
- (3) If a commercial grower processes their own passionfruit, the due date is the date on which the passionfruit is processed.
- (4) If a commercial grower exports their passionfruit, the due date is the earlier of the dates on which the passionfruit is—
 - (a) loaded on an international carrier for export;
 - (b) sold overseas.
- (5) If a collection agent exports a commercial grower's passionfruit on behalf of the grower, the due date is the earlier of the dates on which the passionfruit is—
 - (a) loaded on an international carrier for export;
 - (b) sold overseas.

14 Latest date for payment

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

15 Increased levy payable if levy not paid in time

- (1) NZPGA may increase the levy if a commercial grower or collection agent fails to pay the levy by the latest date for its payment under clause 14.
- (2) The amount of the increased levy is—
 - (a) the amount of levy not paid by the latest date for payment; and
 - (b) an additional 5% of that amount; and
 - (c) an additional 2% of the amount referred to in paragraph (a) for each further month that the amount remains unpaid.

Spending levy money

16 NZPGA must spend levy money

NZPGA must—

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

17 Purposes for which NZPGA may spend levy money

- (1) NZPGA must spend all levy money paid to it for 1 or more of the following purposes relating to passionfruit or growers:
 - (a) product development and promotion:
 - (b) scientific research:
 - (c) pest and disease control:
 - (d) grower education:
 - (e) research into grower-related issues:
 - (f) quality management:
 - (g) communication between growers and industry-related bodies:
 - (h) day-to-day administration of NZPGA.
- (2) NZPGA must not spend the levy money on commercial or trading activities.

18 NZPGA must consult on spending levy money

- (1) NZPGA must, in each levy year, consult commercial growers on how it proposes to spend levy money in the next levy year.
- (2) NZPGA must—
 - (a) notify commercial growers, by way of a newsletter and *The Orchardist* (or any similar publication that is likely to be read by growers), that they

- are invited to attend a general meeting of NZPGA held to approve how the levy money is spent; and
- (b) circulate to all growers before the meeting a draft budget and draft plan of how the levy money is proposed to be spent.
- (3) The draft budget and draft plan must be approved at the general meeting by the commercial growers who are members of NZPGA.
 - (4) Commercial growers who are not members of NZPGA may attend the general meeting, but only have speaking rights on how the levy money is proposed to be spent.

Records and confidentiality

19 Commercial growers must keep records

- (1) A commercial grower must, in each levy year, collect the following information:
 - (a) the name and address of each collection agent (if any) who—
 - (i) bought passionfruit from the grower; or
 - (ii) sold or exported passionfruit on behalf of the grower:
 - (b) each quantity of passionfruit sold, processed, or exported by the grower:
 - (c) the selling price or notional process value of, or the price received by the grower after deduction of all offshore costs (including international freight) for, each quantity of passionfruit sold, processed, or exported by the grower:
 - (d) the amount of levy money paid to NZPGA for each quantity of passionfruit sold, processed, or exported by the grower.
- (2) The commercial grower must keep the information for at least 7 years after the end of the levy year to which it relates.

20 Collection agents must keep records

- (1) A collection agent must, in each levy year, collect the following information:
 - (a) the name and address of each commercial grower from whom passionfruit was bought, or on whose behalf passionfruit was sold or exported:
 - (b) each quantity of passionfruit bought from each grower, or sold or exported on the grower's behalf:
 - (c) the selling price or notional process value of, or the price received by the grower after deduction of all offshore costs (including international freight) for, each quantity of passionfruit bought from each grower, or sold or exported on the grower's behalf:
 - (d) the amount of levy money collected and paid to NZPGA for each quantity of passionfruit bought from each grower, or sold or exported on the grower's behalf.

- (2) The collection agent must keep the information for at least 7 years after the end of the levy year to which it relates.

21 NZPGA must keep records

- (1) NZPGA must, in each levy year, collect the following information:
 - (a) the name and address of each commercial grower or collection agent who paid the levy:
 - (b) the amount of each levy paid to it:
 - (c) how it spent or invested all levy money paid to it.
- (2) NZPGA must keep the information for at least 7 years after the end of the levy year to which it relates.

22 Confidentiality of information

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

Dispute resolution

23 Appointing mediators

- (1) This clause applies to any 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 (the **President**) 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 30.

24 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, 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).

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 Representatives

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

27 Conferences 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.

28 Right to be heard

Each person who attends a conference may be heard at 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 their 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.

30 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.

31 Cost 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 may appeal to the 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 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

33 Remunerating auditors

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

*Revocation***34 Commodity Levies (Passionfruit) Order 2014 revoked**

The Commodity Levies (Passionfruit) Order 2014 (LI 2014/271) 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 11 August 2020, imposes a levy on passionfruit grown commercially in New Zealand.

Commercial growers of passionfruit are primarily responsible for paying the levy. The levy is payable to The N.Z. Passionfruit Growers Association Incorporated (**NZPGA**).

Prior to this order, a levy was imposed on passionfruit by the Commodity Levies (Passionfruit) Order 2014. That order expires at the close of 10 August 2020 and is replaced by this order.

The order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2021, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked on 10 August 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*: 30 June 2020.

This order is administered by the Ministry for Primary Industries.