



# Commodity Levies (Kiwifruit) Order 2024

Cindy Kiro, Governor-General

## Order in Council

At Wellington this 23rd day of January 2024

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

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## Order

- 1 Title**  
This order is the Commodity Levies (Kiwifruit) Order 2024.
- 2 Commencement**  
This order comes into force on 28 February 2024.

### 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*

**KPIN** means the Kiwifruit Property Identification Number issued in respect of an orchard

**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 28 February 2024 and ends on 31 December 2024; and
- (b) for each subsequent year, the period of 12 months that begins on 1 January and ends on 31 December

**mediator** means—

- (a) a person appointed under clause 24; and
- (b) in relation to a particular dispute, the mediator appointed to resolve the dispute

**NZKGI** means New Zealand Kiwifruit Growers Incorporated

**NZKGI Forum** means a body of members of NZKGI established in accordance with NZKGI's constitution

**tray equivalent** means 3.6 kilograms 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.

*Responsibility for payment of levy***5 Primary responsibility for payment**

A grower is primarily responsible for paying the levy, but an exporter must pay the levy to NZKGI.

**6 Exporters may recover levy from growers**

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.

*Payment of levy***7 Levy payment due date**

- (1) The due date for payment of the levy is the day on which 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.

**8 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 full subsequent calendar month in which the levy remains unpaid, an additional 2% on any part of the original unpaid amount that remains unpaid at the end of that month.

**9 Collection fee must not be charged**

The exporter must not charge NZKGI a collection fee for paying or recovering any levy.

**10 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; and
- (e) the KPIN in respect of where the kiwifruit was grown.

*Calculation, fixing, and notification of levy rate*

#### **11 Levy calculation**

The levy payable in a levy year is to 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) in the first instance; or
- (b) if the fruit is not weighed at the point of export, at the point at which the fruit is graded and sorted for export.

#### **12 Fixing of levy rate**

- (1) For the levy year that begins on 28 February 2024, the actual rate of the levy is 0.31 cents per kilogram of kiwifruit exported.
- (2) For subsequent levy years, NZKGI must fix the actual rate or rates of the levy at the annual general meeting of NZKGI in accordance with its rules.
- (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 actual levy rate before the start of a levy year, the levy rate for the year is the last rate fixed under this clause.

#### **13 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.

#### **14 Maximum rate of levy**

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

#### **15 Notifying the rate of levy**

As soon as practicable after the rate of levy for a levy year has been fixed under clause 12, 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.

*Expenditure of levy money***16 NZKGI must spend levy money**

NZKGI must—

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

**17 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) attracting people to the industry:
  - (i) developing and retaining people in the industry:
  - (j) day-to-day administration of NZKGI.

**18 Consultation on and approval of how levy money should be spent**

- (1) 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 NZKGI 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 proposed levy expenditure at NZKGI Forum meetings before the NZKGI annual general meeting; and
  - (d) discussing the draft budget and plan with growers at the NZKGI annual general meeting, or any other special meeting called to discuss the draft budget and plan.
- (2) The annual budget must be approved at the NZKGI annual general meeting, or any other special meeting, by the passing of a resolution.

*Record keeping and confidentiality of information*

**19 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.

**20 Request for information**

- (1) NZKGI may request any of the following information for the purpose of enabling it to calculate the amount of levy payable under clause 4:
  - (a) a grower's records under clause 19(1);
  - (b) an exporter's records under clause 19(2).
- (2) A grower or an exporter who is requested by NZKGI to provide records under subclause (1) must provide NZKGI with the information requested as soon as is reasonably practicable after receiving the request.

**21 Confidentiality of information**

- (1) No officer or employee of NZKGI, and no other person who gathers information, may disclose (other than to some other officer or employee of NZKGI) any information obtained—

- (a) under this order; or
  - (b) under the Act in relation to this order.
- (2) Subclause (1) does not affect or prevent—
- (a) the production of records or accounts under section 17(1) of the Act; or
  - (b) the preparation of any statement under section 25 of the Act; or
  - (c) the giving of evidence in any legal proceedings relating to this order or the Act.
- (3) Subclause (1) does not prevent NZKGI from disclosing or using information—
- (a) for statistical or research purposes, if the information is in a form that does not identify any individual; or
  - (b) for assisting with the collection of the levy; or
  - (c) for determining the voting entitlements or counting the votes in relation to levy matters; or
  - (d) if the person who provided the information and every identifiable person to whom it relates consents to its disclosure; or
  - (e) as required by law.

### *Miscellaneous*

#### **22 Conscientious objectors**

- (1) A person who objects on conscientious or religious grounds to paying the levy in the manner provided for in this order must pay the equivalent amount to the Director-General.
- (2) The Director-General must pay the amount to NZKGI.

#### **23 Remuneration of persons conducting compliance audits**

A person or persons 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*

#### **24 Appointment of mediators**

- (1) This clause applies to any dispute about—
- (a) whether any 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 and, in that case, the President (or a person authorised by



the President to do so) may appoint a person to resolve the dispute by mediation.

- (3) 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 31.

## **25 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).

## **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 by post or email; and
- (c) preside at the conference.

## **27 Conferences to be held in private**

Subject to clause 28, only the parties to a dispute may attend a conference with the mediator.

## **28 Representatives**

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties organised by the mediator.

## **29 Right to be heard**

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties to the dispute, may be heard at the conference.

**30 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.

**31 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.

**32 Costs of mediation**

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 under clause 31(1) may appeal to the District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal within 28 days after the decision concerned is made or within any longer time 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 under clause 31(1).
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

### *Revocation*

#### **34 Revocation of Commodity Levies (Kiwifruit) Order 2017**

The Commodity Levies (Kiwifruit) Order 2017 (LI 2017/282) is revoked.

Rachel Hayward,  
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 28 February 2024, 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 from growers. After consulting growers, NZKGI must spend the levy money for the purposes set out in clause 17, such as research and grower representation.

This order must be confirmed by an Act before the close of 30 June 2025. If it is not confirmed, it will be revoked on the close of that date. *See* subpart 3 of Part 5 of the Legislation Act 2019.

If the order is confirmed, it will be revoked on the close of 27 February 2030, unless it is extended under section 13(2) of the Commodity Levies Act 1990.

This order revokes and replaces the Commodity Levies (Kiwifruit) Order 2017.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 25 January 2024.

This order is administered by the Ministry for Primary Industries.