



## Commodity Levies (Blackcurrants) Order 2007

Anand Satyanand, Governor-General

### Order in Council

At Wellington this 29th day of October 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Agriculture, makes the following order.

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## Order

### 1 Title

This order is the Commodity Levies (Blackcurrants) Order 2007.

### 2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

### 3 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Commodity Levies Act 1990

**BCNZ** means the industry organisation known on the commencement of this order as Blackcurrants N.Z. Limited

**collection agent** means a person whose business is or includes buying blackcurrants from growers

**grower** means a person whose business is or includes producing blackcurrants in New Zealand for commercial purposes

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

**levy** means the levy imposed by clause 4

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

**levy year**—

- (a) means a period of 12 months beginning on 1 October and ending on 30 September; and
- (b) includes the period beginning on the commencement of this order and ending on 30 September 2008

**mediator** means a person appointed under clause 20 and, in relation to a dispute, the mediator appointed to resolve that dispute

**society** means the society of growers known on the commencement of this order as the Blackcurrant Product Group Incorporated.

#### *Levy imposed*

### 4 Levy imposed

- (1) A levy is imposed on blackcurrants that a grower produces in New Zealand for commercial purposes.
- (2) The levy is payable to BCNZ.

#### *Responsibility for payment of 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 agents must pay levy and recover it from growers**

- (1) A collection agent must pay the levy on blackcurrants that it buys from a grower.
- (2) A collection agent may recover the levy (and any GST paid in respect of it) from the grower by deducting the levy from the amount otherwise payable to the grower for the blackcurrants.
- (3) A collection agent may not charge a collection fee for paying or recovering the levy.

### *Determination of levy*

## **7 Basis of calculation of levy**

- (1) The levy on blackcurrants is to be calculated on the basis of their weight in kilograms at the first point of sale.
- (2) The levy must be paid at a single rate.

## **8 Initial rate of levy**

- (1) BCNZ must fix the rate of levy for the first levy year (beginning on the commencement of this order) on the recommendation of the society and with the approval of the Minister of Agriculture.
- (2) BCNZ may fix the rate of levy for the first levy year by any means by which it may lawfully make decisions.
- (3) If the rate of levy is not fixed and notified in the *Gazette* before the beginning of the first levy year, the rate takes effect on and from the date of the notification.

## **9 Later rates of levy**

- (1) BCNZ may fix the rate of levy for a later levy year by any means by which it may lawfully make decisions.
- (2) The rate of levy may not be fixed for a later levy year unless either—
  - (a) the rate is no greater than the rate for the previous levy year; or
  - (b) the rate was approved by growers at the last annual general meeting of the society and either—
    - (i) increases the rate from the previous levy year by no more than the annual percentage increase in

- the Consumers Price Index (All Groups) published by Statistics New Zealand most recently before the meeting; or
- (ii) is approved by the Minister of Agriculture.

## **10 Previous rate of levy to apply**

If the rate of levy is not fixed for a later levy year in accordance with clause 9, then the rate of levy last fixed applies for that later levy year.

## **11 Notification of rate of levy**

As soon as practicable after fixing a rate of levy for any levy year, BCNZ must notify the rate—

- (a) in the *Gazette*; and
- (b) by its newsletter, to all potential levy payers and collection agents known to it.

### *Payment of levy*

## **12 Payment of levy**

- (1) BCNZ must invoice collection agents at the end of each quarter for the levy payable on the blackcurrants that the collection agent sold during the quarter.
- (2) The invoice for the quarter ending on 30 September in any levy year must include the levy payable on the blackcurrants that the collection agent did not sell during the levy year.
- (3) The levy—
  - (a) is due on the date that the invoice is issued; and
  - (b) must be paid on or before the 20th day of the month following the date that the invoice is issued.

### *Expenditure of levy money*

## **13 BCNZ must spend levy money**

- (1) BCNZ must spend all levy money paid to it.
- (2) BCNZ must invest all levy money until it is spent.

## **14 Purposes for which levy money may be spent**

- (1) BCNZ may spend levy money for the following purposes relating to blackcurrants or growers:
  - (a) product research and development:

- (b) market research and development:
  - (c) promotion of blackcurrants:
  - (d) quality assurance:
  - (e) education:
  - (f) day-to-day administration of BCNZ.
- (2) BCNZ must not spend any levy money on commercial or trading activities unless the Minister of Agriculture gives written approval in accordance with section 10(4) and (5) of the Act.

**15 BCNZ must consult growers on spending of levy money**  
BCNZ—

- (a) must, at the annual general meeting of the society, consult growers on how it is to spend the levy money; and
- (b) may, at any special general meeting of the society, consult growers on how it is to spend the levy money.

*Record-keeping requirements and confidentiality of information*

**16 Records**

- (1) A grower must, for each levy year, keep records of—
  - (a) the name and address of each collection agent to whom the grower has sold blackcurrants; and
  - (b) the quantities sold to each collection agent.
- (2) A collection agent must, for each levy year, keep records of—
  - (a) the name and address of each grower from whom blackcurrants were bought; and
  - (b) the quantities bought from each grower; and
  - (c) the amount of levy deducted in respect of each quantity.
- (3) BCNZ must, for each levy year, keep records of—
  - (a) each amount of levy money paid to it; and
  - (b) the person who paid each amount and the date on which it was received; and
  - (c) how the levy money was spent or invested.
- (4) The records required by this clause must be retained for at least 2 years from the end of the levy year to which they relate.

**17 Confidentiality of information**

- (1) No officer or employee of BCNZ, or any person involved in collecting levy money (such as a collection agent), may disclose (except to an officer or employee of BCNZ) any information obtained—
  - (a) under or because of 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 production of any statement under section 25 of the Act; or
  - (c) the giving of evidence in any legal proceedings taken—
    - (i) under or in relation to this order; or
    - (ii) in relation to this order, under or in relation to the Act; or
  - (d) the disclosure of information that is required by law.
- (3) Subclause (1) does not prevent BCNZ from—
  - (a) disclosing or using any information for statistical or research purposes, if the information is disclosed in a form that does not identify any person; or
  - (b) disclosing or using any information for the purposes of invoicing or collecting the levy; or
  - (c) disclosing or using any information with the consent of every identifiable person to whom it relates.

*Miscellaneous***18 Conscientious objectors**

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to BCNZ.

**19 Remuneration of persons conducting compliance audits**

A person appointed as auditor under section 15 of the Act must be remunerated by BCNZ at a rate determined by the Minister of Agriculture after consultation with BCNZ.

*Mediation of disputes***20 Appointment of 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 the 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 when—
  - (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 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 a mediator's remuneration, the President (or a person authorised by the President to do so) 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 fixed by the President (or authorised person) and specified as an amount to be paid by that party.

**22 Conference**

A mediator may organise a conference to facilitate the resolution of the dispute between the parties.

**23 Time and place of conference**

Every conference organised by a mediator of the parties to a dispute must be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.



**24 Conference to be held in private**

- (1) Only the parties to a dispute and the mediator may attend a conference organised by the mediator.
- (2) Despite subclause (1), a mediator may, if satisfied in all the circumstances that it is appropriate to do so, allow a representative of any party to a dispute to attend a conference.

**25 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 organised by a mediator, may be heard at the conference.

**26 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, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a 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 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.

**28 Costs of mediation**

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

**29 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 27 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 after the decision is made; or
  - (b) within any longer time that 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 notify the appellant and the other parties to the dispute; and
  - (b) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (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***30 Revocation**

- (1) The Commodity Levies (Blackcurrants) Order 2001 (SR 2001/333) is revoked.
- (2) Amounts of levy that become payable to BCNZ under the Commodity Levies (Blackcurrants) Order 2001 before the commencement of this order continue to be due and payable as if that order had not been revoked.

Diane Morcom,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order comes into force on the 28th day after the date of its notification in the *Gazette*. It imposes a levy payable to Blackcurrants N.Z. Limited on blackcurrants that a grower produces in New Zealand for commercial purposes. The order revokes and replaces the Commodity Levies (Blackcurrants) Order 2001.

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

Date of notification in *Gazette*: 1 November 2007.

This order is administered by the Ministry of Agriculture and Forestry.

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