



Commodity Levies (Navel Oranges) Order 2006

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 29th day of May 2006

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

- 1 Title**
This order is the Commodity Levies (Navel Oranges) Order 2006.
- 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 requires otherwise,—
Act means the Commodity Levies Act 1990

collection agent means a person to whom the following apply:

- (a) the person has a business of, or including,—
 - (i) buying navel oranges from growers; or
 - (ii) selling navel oranges on behalf of growers in any capacity, including as agent, auctioneer, broker, exporter, procurer, produce distribution centre, retailer, or wholesaler; and
- (b) the person operates the business—
 - (i) by itself; or
 - (ii) together with 1 or more other businesses

grower means a person who grows navel oranges 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 the money paid under this order as a levy

levy rate means the rate fixed under clause 10

levy year means,—

- (a) for the first year, the period—
 - (i) starting on the date on which this order commences; and
 - (ii) ending on 31 March 2007; and
- (b) for each later year, the period starting on 1 April and ending on 31 March

mediator means—

- (a) a person appointed under clause 21; and
- (b) for a particular dispute, means the mediator appointed to resolve the dispute

navel orange means any of the following oranges and their hybrids:

- (a) Autumn Gold:
- (b) bahianinha:
- (c) Barnfield:
- (d) brown:
- (e) cara cara:
- (f) carter:
- (g) carter sport:
- (h) frost washington:

- (i) fukumoto:
- (j) johnson:
- (k) lane late:
- (l) late navel:
- (m) manutuke late:
- (n) navelate:
- (o) navelina:
- (p) newhall:
- (q) NSW navel:
- (r) parent:
- (s) Powell Late:
- (t) Robertson:
- (u) stunt-free navel:
- (v) Summer Gold:
- (w) washington

NZCGI means New Zealand Citrus Growers Incorporated

OTPG means the NZCGI Orange and Tangelo Product Group.

4 Levy

- (1) A levy is imposed on navel oranges that a grower grows in New Zealand for sale or export as fresh fruit.
- (2) The levy is payable to NZCGI.

Payment of levy

5 Responsibility of growers

The grower is primarily responsible for paying the levy.

6 Responsibility of collection agents

- (1) A collection agent must not pay the levy or any GST payable on it if—
 - (a) the grower—
 - (i) gives the agent notice by mail or email that the grower will pay the levy directly to NZCGI; and
 - (ii) has the written or emailed agreement of NZCGI to accept the grower's direct payment; or
 - (b) the grower sells navel oranges directly to the public; or
 - (c) the grower exports navel oranges directly.

- (2) A collection agent must pay the levy and any GST payable on it on navel oranges that the agent buys from a grower. This subclause does not apply if the agent buys navel oranges from a grower through another collection agent.
- (3) A collection agent must pay the levy and any GST payable on it on navel oranges that the agent—
 - (a) sells on the grower's behalf; or
 - (b) exports on the grower's behalf.
- (4) A collection agent to whom subclause (2) or (3) applies may—
 - (a) recover the amount of the levy and any GST payable on it from the grower by—
 - (i) deducting the amount from the agent's payment to the grower; or
 - (ii) recovering the amount as a debt due to the agent from the grower; and
 - (b) deduct a collection fee from the levy, if the deduction is—
 - (i) made before the levy is paid to NZCGI; and
 - (ii) no more than 10% of the total of the levy exclusive of GST and the GST payable on it.

Rate of levy

7 Levy payable at single rate

The levy must be paid at a single rate.

8 Maximum levy rate

The maximum levy rate is 3 cents per kilogram (excluding GST).

9 Levy calculation

The levy must be calculated—

- (a) on the basis of cents per kilogram before the deduction of costs; and
- (b) at the first point of sale.

10 Fixing of levy rate

- (1) For the levy year ending on 31 March 2007, the OTPG must fix the levy rate in accordance with its decision-making rules.

- (2) For each later levy year, the OTPG must fix the levy rate at the OTPG's annual meeting under NZCGI's voting rules.
- (3) If the OTPG does not fix the levy rate before the start of a levy year, the levy for the year is payable at the last rate fixed under this clause.
- (4) Growers at the OTPG's annual meeting who are not members of NZCGI must be allowed to vote on the levy rate.

11 Notification of levy rate

- (1) As soon as practicable after the levy rate for a levy year is fixed, NZCGI must notify the levy rate and the year to which it applies—
 - (a) in the *Gazette*; and
 - (b) in *The Orchardist*; and
 - (c) in *Citrus News* or another industry publication; and
 - (d) by mail or email to all growers and collection agents known to NZCGI.
- (2) If *The Orchardist* or *Citrus News* or both cease to be published, the levy rate must be notified in—
 - (a) any publication that replaces either of those publications; or
 - (b) if no publication replaces either of them, a publication specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*.

Time for payment of levy

12 When levy payable

- (1) For a grower who pays the levy directly to NZCGI, the due date for payment of the levy to NZCGI is,—
 - (a) for the levy year ending on 31 March 2007,—
 - (i) 30 September 2006; and
 - (ii) 31 December 2006; and
 - (iii) 31 March 2007; and
 - (b) for each later levy year, at the end of each quarter of the levy year.
- (2) For a grower who pays the levy through a collection agent, the due date for payment of the levy to NZCGI is the date on which the collection agent deducts the amount of the levy and any GST payable on it from the agent's payment to the grower.

- (3) The latest date for payment of the levy is the 20th day of the month following the due date for payment.

13 Additional levy payable if levy not paid in time

- (1) This clause applies if any amount of the levy has not been paid by the close of the latest day for payment.
- (2) The following rules apply:
 - (a) 10% of the unpaid amount must be paid to NZCGI; and
 - (b) the unpaid amount does not include additional levies already owing under this clause; and
 - (c) the 10% is payable in addition to the levy already payable.

Record-keeping requirements and confidentiality of information provided to NZCGI

14 Records

- (1) For the purpose of ascertaining whether or not this order has been complied with,—
 - (a) growers must comply with subclause (2); and
 - (b) collection agents must comply with subclause (3); and
 - (c) NZCGI must comply with subclause (4).
- (2) A grower must—
 - (a) prepare, in each levy year, records of—
 - (i) the name of the collection agent or exporter that the grower uses (if any); and
 - (ii) the quantity of navel oranges that the grower sells or exports; and
 - (iii) the amount of levy paid to NZCGI; and
 - (iv) the value of the navel oranges to which the amount of levy paid relates; and
 - (b) provide NZCGI with information from the records as soon as is reasonably practicable after receiving from NZCGI a request for the information by mail or email for the purpose of determining the amount of levy payable; and
 - (c) keep the records for at least 2 years after the date on which the levy to which the records relate is paid to NZCGI.
- (3) A collection agent must—

- (a) prepare, in each levy year, records about each grower of navel oranges—
 - (i) from whom the collection agent buys navel oranges in the year for resale or export; or
 - (ii) on whose behalf the agent sells or exports navel oranges grown by the grower; and
 - (b) include in the records—
 - (i) the name and address of the grower and buyer; and
 - (ii) the quantity of navel oranges that the agent buys for sale or export; and
 - (iii) the quantity of navel oranges that the agent sells or exports on growers' behalf; and
 - (iv) the amount of levy collected; and
 - (v) the amount of levy paid to NZCGI; and
 - (c) tell each grower the amount of the levy and any GST payable on it that the agent deducts from the agent's payment to the grower; and
 - (d) provide NZCGI with information from the records as soon as is reasonably practicable after receiving from NZCGI a request for the information by mail or email for the purpose of determining the amounts of levy payable; and
 - (e) keep the records for at least 2 years after the date on which the levy to which the records relate is paid to NZCGI.
- (4) NZCGI must—
- (a) prepare, in each levy year, records of—
 - (i) each amount of levy money paid to it; and
 - (ii) for each amount of levy money, the date on which the money was received; and
 - (iii) for each amount of levy money, the name of the person who paid the money; and
 - (iv) for all the levy money paid to it, how the money has been spent or invested; and
 - (b) keep the records for at least 2 years after the levy year to which the records relate.

15 Confidentiality of information

- (1) No officer or employee of NZCGI, or any other person who gathers information, may disclose any information obtained under this order unless—
 - (a) the person to whom it is disclosed is an officer or employee of NZCGI; or
 - (b) the person who provided the information and every identifiable person to whom it relates consents to its disclosure; or
 - (c) its disclosure is required by law.
- (2) Subclause (1) does not affect or prevent the disclosure of information, records, or statements for the purposes of—
 - (a) assisting with the collection of the levy; or
 - (b) complying with section 17(1) or 25 of the Act; or
 - (c) giving evidence in legal proceedings relating to this order or the Act.
- (3) Subclause (1) does not prevent NZCGI from disclosing or using any information for statistical or research purposes if the information is in a form that does not identify any individual.

*Expenditure of levy money by NZCGI***16 Levy money must be spent by NZCGI**

NZCGI must—

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

17 Purposes for which levy money may be spent

- (1) NZCGI must not spend levy money on commercial or trading activities.
- (2) NZCGI may spend levy money for any or all of the following purposes relating to navel oranges 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) day-to-day administration of the OTPG.

- (3) A project by the OTPG valued at more than \$20,000 a year may proceed only if approved—
 - (a) at—
 - (i) the OTPG's annual meeting; or
 - (ii) a special meeting of the OTPG called for the purpose; and
 - (b) in a vote conducted under NZCGI's voting rules.

18 Consultation on spending levy money

- (1) NZCGI must consult growers who pay the levy on how it proposes to spend the levy money.
- (2) NZCGI must use the following avenues to consult growers who are members of NZCGI:
 - (a) its annual meeting; and
 - (b) special meetings called for the purpose; and
 - (c) quarterly newsletters to all members.
- (3) NZCGI must use the following avenues to consult growers who are not members of NZCGI:
 - (a) its annual meeting; and
 - (b) special meetings called for the purpose.
- (4) For the purposes of subclause (3), NZCGI must—
 - (a) give the growers notice of an annual meeting or a special meeting at which spending levy money is to be discussed; and
 - (b) give the notice by mail or email; and
 - (c) give the notice at least 3 weeks before the meeting; and
 - (d) allow the growers at the meeting to speak on all matters relating to spending levy money.

Miscellaneous

19 Conscientious objectors

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

- (a) the grower or agent may pay the equivalent amount to the chief executive of the Ministry of Agriculture and Forestry; and
- (b) the chief executive must pay the amount to NZCGI.

20 Remuneration of persons conducting compliance audits

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

*Mediation of disputes***21 Appointment of mediators**

- (1) This clause applies to any dispute about—
 - (a) whether or not a 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. If asked, the President or a person authorised by the President may appoint a person to resolve the dispute by mediation.
- (3) 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 28.

22 Remuneration of 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 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).

23 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 mail or email; and
- (c) preside at the conference.

24 Conferences to be held in private

Only the parties to a dispute may attend a conference with the mediator, except when clause 25 applies.

25 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.

26 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.

27 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.

28 Mediator may resolve dispute in certain cases

- (1) The mediator may resolve a dispute for the parties if—
 - (a) the dispute has not been resolved at a conference of the parties with the mediator; or
 - (b) the dispute appears to the mediator to be unlikely to be resolved by the parties, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties notice of the mediator's decision, and the reasons for the decision, in person, by mail, or by email.
- (3) The parties must comply with the mediator's decision.

29 Costs of mediation

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

30 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 28 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the date on which the mediator makes the decision; 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
 - (b) notify the appellant and the other parties to the dispute of the 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.
- (6) The filing of a notice of appeal does not operate as a stay of process for the enforcement of the mediator's decision.

Diane Morcom,
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 payable to New Zealand Citrus Growers Incorporated on navel oranges sold or exported by growers.

The order comes into force 28 days after it is notified in the *Gazette*.

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

Date of notification in *Gazette*: 1 June 2006.

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