

**Reprint  
as at 14 April 2014**



## **Commodity Levies (Feijoas) Order 2008**

(SR 2008/102)

Commodity Levies (Feijoas) Order 2008: revoked, on 14 April 2014, by section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 14th day of April 2008

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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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This order is administered by the Ministry for Primary Industries.**

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## Order

### 1 Title

This order is the Commodity Levies (Feijoas) Order 2008.

### 2 Commencement

This order comes into force on 15 May 2008.

### 3 Interpretation

In this order, unless the context requires another meaning,—  
**association** means the industry organisation known on the commencement of this order as New Zealand Feijoa Growers Association Incorporated

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

- (a) buying feijoas from a commercial grower (other than through another collection agent) for processing, resale, or export; or
- (b) selling or exporting feijoas on behalf of a commercial grower

**commercial grower** or **grower** means a person—

- (a) whose business is or includes producing feijoas; and
- (b) who has more than 50 feijoa trees

**feijoa** means fruit of the species *Feijoa sellowiana* or any fruit that is a hybrid of that species

**FOB value**, in relation to any feijoas exported from New Zealand for which a customs entry is made, means the free on board value of the feijoas as specified in the declaration attached to, or forming part of, the customs entry

**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 money paid under this order as a levy

**levy year** means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on 31 October 2008;
- (b) for every other levy year, a period of 12 months starting on 1 November and ending on 31 October

**processed**, in relation to feijoas,—

- (a) means feijoas that are bottled, canned, dehydrated, dried, freeze-dried, frozen, or preserved; and
- (b) includes feijoa concentrate, pulp, purée, or essence (whether alone or with other ingredients).

#### **4 Levy imposed**

- (1) A levy is imposed on all feijoas produced in New Zealand for commercial purposes.
- (2) The levy is payable to the association.

#### *Payment of levy*

#### **5 Commercial growers primarily responsible for paying levy**

Commercial growers of feijoas are primarily responsible for paying the levy on the feijoas.

#### **6 Collection agents must pay levy and may recover it from growers**

- (1) A collection agent must pay any levy on feijoas that the collection agent—
  - (a) buys from a grower (other than through another collection agent); or
  - (b) sells, or exports, on a grower's behalf.
- (2) A collection agent may recover the levy (and any GST payable on the levy) from the grower by reducing the amount payable to the grower for the feijoas.
- (3) A collection agent who pays the levy may deduct from the payment a collection fee of—
  - (a) no more than 10% of the amount of the levy (exclusive of GST); and
  - (b) any GST payable on the fee.

*Rate of levy*

- 7 Levy to be paid at single rate**  
The levy is to be paid at a single rate.
- 8 Basis of calculation of levy**  
The levy payable in a levy year is to be calculated,—
- (a) for feijoas sold by, or on behalf of, the grower in New Zealand, on the basis of the price of the feijoas (excluding GST) at the first point of sale;
  - (b) for feijoas processed by or for the grower in New Zealand, on the basis of the value of the unprocessed feijoas (excluding GST), which is itself calculated from the value (per kilogram) of unprocessed feijoas as fixed by the association at its annual general meeting for that levy year;
  - (c) for feijoas exported by, or on behalf of, the grower, on the basis of the FOB value of the feijoas (excluding GST).
- 9 Maximum rate of levy**  
The maximum rate of levy is 3% of the price or value that is the basis for the calculation of the levy under clause 8.
- 10 Association must fix actual rate of levy**
- (1) The association must fix the actual rate of levy for the first levy year in accordance with its rules.
  - (2) The association must fix the actual rate of levy for each later levy year—
    - (a) at an annual general meeting; or
    - (b) at a special general meeting called for that purpose.
- 11 When rate of levy takes effect**
- (1) The rate of levy for the first levy year takes effect on and from the date it is notified in the association's newsletter under clause 12.
  - (2) The rate of levy for each later levy year takes effect on and from the date it is fixed under clause 10(2).

- (3) The rate of levy last fixed under clause 10 continues to apply until another rate of levy is fixed under clause 10(2).

## **12 Notification of rate of levy**

- (1) As soon as practicable after fixing a rate of levy for a levy year, the association must notify it in—
- (a) *The Orchardist*; and
  - (b) the association's newsletter.
- (2) If *The Orchardist* or the association's newsletter ceases to be published, the rate of levy for a levy year must be notified in—
- (a) any publication that replaces the relevant publication; or
  - (b) if no publication replaces it, a publication that the Minister of Agriculture specifies by notice in the *Gazette*.

### *Time for payment of levy*

## **13 When levy payable**

- (1) The due date for payment of any levy is,—
- (a) for feijoas sold by the grower (including to a collection agent) in New Zealand, the date of sale by the grower;
  - (b) for feijoas processed by or for the grower in New Zealand, the date on which the feijoas are processed;
  - (c) for feijoas exported by the grower, the earlier of—
    - (i) the date of sale by the grower;
    - (ii) the date on which the feijoas are loaded on an international carrier for export;
  - (d) for feijoas sold or exported by a collection agent on behalf of the grower, the earlier of—
    - (i) the date of sale by the collection agent;
    - (ii) the date on which the feijoas are loaded on an international carrier for export.
- (2) An amount of levy that becomes payable during any month must be paid no later than the 20th day of the next month.

### *Expenditure of levy money*

## **14 Association must spend levy money**

The association must—

- (a) spend all levy money paid to it:

- (b) invest the levy money until it is spent.

**15 Association must consult on how levy money is spent**

- (1) The association must, at least once every 12 months and in accordance with this clause, consult commercial growers on how the levy money is to be spent.
- (2) The association must prepare a draft budget and draft plan of how the levy money is proposed to be spent and circulate them to all commercial growers a reasonable time before the annual general meeting, or a special general meeting, of the association.
- (3) The budget and plan must be approved at the general meeting by the commercial growers who are members of the association.
- (4) Commercial growers who are not members of the association may attend the general meeting, but only have speaking rights on how the levy money is proposed to be spent.

**16 Purposes for which levy money may be spent**

- (1) The association may spend the levy money for the following purposes relating to feijoas or the growing of feijoas:
  - (a) product research and development:
  - (b) market research and development:
  - (c) promotion of feijoas:
  - (d) quality assurance:
  - (e) education:
  - (f) day-to-day administration of the association.
- (2) The association 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 Commodity Levies Act 1990.

*Record-keeping and information requirements*

**17 Records**

- (1) A commercial grower must, for every levy year, keep records of—
  - (a) each amount of levy paid to the association and the date of each payment; and

- (b) each quantity of feijoas sold by the commercial grower and the price received for each quantity; and
  - (c) each quantity of feijoas processed by or for the commercial grower; and
  - (d) each quantity of feijoas exported by the commercial grower and the FOB value of each quantity; and
  - (e) the full name and contact details of each collection agent or exporter to whom feijoas are sold.
- (2) A collection agent must, for every levy year, keep records of—
- (a) each amount of levy paid to the association and the date of each payment; and
  - (b) each quantity of feijoas purchased from a commercial grower and the price paid for each quantity; and
  - (c) each quantity of feijoas sold by the collection agent on behalf of a commercial grower and the price received for each quantity; and
  - (d) each quantity of feijoas exported by the collection agent on behalf of a commercial grower and the FOB value of each quantity; and
  - (e) the full name and contact details of each commercial grower referred to in paragraph (b), (c), or (d).
- (3) The association must, for every 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 the amount was received; and
  - (c) how it invested levy money (if at all); and
  - (d) how and when it spent levy money.
- (4) The records required by this clause must be retained for at least 2 years after the end of the levy year to which they relate.

## **18 Confidentiality of information**

- (1) No officer or employee of the association, or any person involved in collecting levy money (such as a collection agent), may disclose any information obtained—
- (a) under or because of this order; or
  - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent the disclosure of information—



- (a) to an officer or employee of the association; or
  - (b) with the consent of every identifiable person to whom it relates; or
  - (c) for statistical or research purposes, if the information is disclosed in a form that does not identify any person; or
  - (d) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
- (a) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or
  - (b) giving evidence in any legal proceedings taken under or in relation to this order; or
  - (c) determining the voting entitlements, or counting the votes, of commercial growers; or
  - (d) issuing invoices for, or collecting, the levy.

#### *Miscellaneous*

#### **19 Conscientious objectors**

- (1) A commercial 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 the association.

#### **20 Remuneration of auditors**

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the association at a rate determined by the Minister of Agriculture after consultation with the association.

#### *Mediation of disputes*

#### **21 Appointment of mediators**

- (1) This clause applies to any dispute about—
  - (a) whether a person is required to pay the levy; or
  - (b) the amount of levy payable.
- (2) Any party to a 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 under subclause (2), 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 28.

## **22 Remuneration of mediators**

- (1) A mediator must be paid remuneration (by way of fees and allowances) agreed to 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 the remuneration to be paid to the mediator; and
  - (b) specify how much of that remuneration (if any) each party must pay.
- (3) A party must pay to the mediator any amount specified as payable by that party under subclause (2)(b).

## **23 Conference to resolve dispute**

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference 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 must be held in private**

Only the mediator and the parties to a dispute may attend a conference, unless clause 25 applies.

## **25 Representatives**

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

## **26 Right to be heard**

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every 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, 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 to verify the evidence by statutory declaration.

**28 Mediator may resolve dispute in certain cases**

- (1) A mediator may resolve a dispute for the parties if—
  - (a) the dispute is not resolved at a conference; 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.

**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 decision made by a mediator 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 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

- (b) notify the time and place to 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) Every 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.

Rebecca Kitteridge,  
for 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 15 May 2008. It replaces the Commodity Levies (Feijoas) Order 2001, which expired at the close of 5 August 2007.

This order imposes a levy on all feijoas produced in New Zealand for commercial purposes. The levy is payable by commercial growers or collection agents to New Zealand Feijoa Growers Association Incorporated.

The order expires 6 years after it is made (because of section 13(1) of the Commodity Levies Act 1990), unless it is revoked or extended before then.

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 17 April 2008.

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## **Reprints notes**

### **1     *General***

This is a reprint of the Commodity Levies (Feijoas) Order 2008 that incorporates all the amendments to that order as at the date of the last amendment to it.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

Commodity Levies Act 1990 (1990 No 127): section 13(1)

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