

Reprint
as at 11 December 2015



Commodity Levies (Passionfruit) Order 2014
(LI 2014/271)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 11th day of August 2014

Present:

The Right Hon John Key presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act.

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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 (Passionfruit) Order 2014.

2 Commencement

This order comes into force on 29 September 2014.

Order: confirmed, on 11 December 2015, by section 10(b) of the Subordinate Legislation (Confirmation and Validation) Act 2015 (2015 No 119).

3 Interpretation

(1) In this order, unless the context otherwise requires,—

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

- (a) buying passionfruit from a commercial grower for processing or for sale in New Zealand or overseas; or
- (b) selling passionfruit in New Zealand or overseas on behalf of a commercial grower

commercial 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

FOB value means, in relation to passionfruit exported from New Zealand, the free on board value of the passionfruit (excluding GST) specified in the declaration in, attached to, or forming part of the customs entry for the passionfruit

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

levy means the levy imposed by clause 5

levy year means,—

- (a) for the first levy year, the period starting on 29 September 2014 and ending on 31 December 2014:
- (b) for the last levy year, the period starting on 1 January 2020 and ending on 10 August 2020:
- (c) in every other case, a 1-year period starting on 1 January and ending on 31 December

notional process value means the amount of money (excluding GST and before the deduction of any costs or charges) that, in the opinion of the NZPGA, a commercial 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*

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 the NZPGA considers that the price referred to in paragraph (a) is not consistent with prevailing market conditions in the grower's locality, the market value that, in the opinion of the NZPGA, the buyer would reasonably expect to pay for the passionfruit.
- (2) In the definition of selling price in subclause (1), **price** includes the following amounts if the 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 the 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.

Clause 3(1) **levy year** paragraph (b): amended, on 25 April 2015, by clause 4 of the Commodity Levies (Passionfruit) Amendment Order 2015 (LI 2015/56).

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.

Imposition and amount

5 **Imposition**

A levy is imposed on all passionfruit grown in New Zealand by commercial growers.

6 **Calculation**

The levy must be calculated,—

- (a) for passionfruit sold by, or on behalf of, a commercial grower, on the basis of the selling price of the passionfruit:
- (b) for passionfruit processed before the first point of sale, on the basis of the notional process value of the unprocessed passionfruit:
- (c) for passionfruit exported before the first point of sale, on the basis of the FOB value of the passionfruit.

7 Rate

- (1) The NZPGA must set the actual levy rate at a single rate.
- (2) The actual levy rate must not exceed 4% of the selling price, notional process value, or FOB value that is the basis for the calculation of the levy under clause 6.
- (3) The NZPGA must set the actual levy rate for the first levy year in accordance with its rules.
- (4) The 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 the NZPGA does not set the actual levy rates for a levy year, the levy rates currently applying continue to apply.

8 Notification

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

Payment

9 Payee

The levy is payable to the NZPGA.

10 Payers

- (1) Commercial growers are primarily responsible for paying the levy.
- (2) If a grower uses a collection agent, the agent must pay the levy.
- (3) The collection agent may charge the NZPGA a collection fee of not more than 10% of the levy payable (exclusive of GST) plus the GST payable on the fee by deducting the fee plus GST before paying the levy to the NZPGA.
- (4) If the collection agent wishes to recover the levy, the agent must,—
 - (a) if the agent buys the passionfruit from the 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 the agent sells the passionfruit on the grower's behalf, recover the amount of the levy as a debt due from the grower.

11 Conscientious objection to payee

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

12 Information to determine payment

- (1) A payment of the levy by a commercial grower to the NZPGA must be accompanied by a statement of the selling price, notional process value, or FOB value of the passionfruit to which the payment relates.
- (2) A payment of the levy by a collection agent to the NZPGA must be accompanied by a statement of the amount of levy the agent has collected from commercial growers.
- (3) The NZPGA may request a commercial grower or a collection agent to provide it with any information that it reasonably requires in order to determine the levy that the grower or agent must pay.
- (4) The NZPGA must make the request by email or post.
- (5) The grower or agent must provide the information as soon as is practicable.

13 Due and latest dates for payment

Due dates for payment

- (1) If a commercial grower sells the grower's 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's passionfruit is processed by the grower, or on the grower's behalf, the due date is the date on which the passionfruit is processed.
- (4) If a commercial grower exports the grower's 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.

Latest dates for payment

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

14 Increased levy payable if levy not paid in time

- (1) A commercial grower or collection agent must pay the NZPGA an increased levy if the grower or collection agent fails to pay the levy by the latest date for its payment under clause 13.
- (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

15 Purposes

- (1) The NZPGA must spend all levy paid to it for 1 or more of the following purposes relating to passionfruit or commercial 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 the NZPGA.
- (2) The NZPGA must not spend the levy on commercial or trading activities.
- (3) The NZPGA must invest the levy until it spends the levy.

16 Consultation

- (1) The NZPGA must, in each levy year, consult commercial growers on how it proposes to spend the levy in the next levy year.
- (2) For the purposes of subclause (1), the NZPGA must—
 - (a) notify 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 the NZPGA held to approve how the levy is spent; and
- (b) circulate to all growers before the meeting a draft budget and draft plan of how the levy is proposed to be spent.
- (3) The draft budget and draft plan must be approved at the general meeting by the growers who are members of the NZPGA.
 - (4) Growers who are not members of the NZPGA may attend the general meeting, but only have speaking rights on how the levy is proposed to be spent.

Records

17 Commercial growers

- (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 of, or notional process value or FOB value placed on, each quantity of passionfruit sold, processed, or exported by the grower:
 - (d) the amount of levy paid to the NZPGA for each quantity of passionfruit sold, processed, or exported by the grower.
- (2) The grower must keep the information for at least 7 years after the end of the levy year to which it relates.

18 Collection agents

- (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 of, or notional process value or FOB value placed on, each quantity of passionfruit bought from each grower, or sold or exported on the grower's behalf:
 - (d) the amount of the levy collected and paid to the 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.

19 NZPGA

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

20 Confidentiality

- (1) This clause applies to information obtained—
 - (a) under the Commodity Levies Act 1990 in relation to this order; or
 - (b) under or because of this order.
- (2) An officer or employee of the NZPGA, or any person involved in collecting the levy, must not disclose the information to anyone other than an officer or employee of the NZPGA.
- (3) However, the NZPGA may disclose the information for the following purposes:
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990:
 - (b) the production of a statement under section 25 of the Commodity Levies Act 1990:
 - (c) the giving of evidence in legal proceedings taken under or in relation to this order:
 - (d) statistical and research purposes that do not involve the disclosure of personal information.

Disputes

21 Appointment of mediators

- (1) This clause applies to a dispute concerning—
 - (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 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 28.

22 Remuneration of mediators

- (1) A mediator is to 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 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 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).

23 Conferences under control of mediators

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties of the matters specified in paragraph (a) by email or post; and
- (c) preside at the conference.

24 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.

25 Conferences to be held in private

The only persons who may attend a conference organised by a mediator are—

- (a) the parties to a dispute; and
- (b) the mediator; and
- (c) representatives the mediator allows to attend.

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 normally 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 any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

28 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.

29 Cost of mediation

Each party must pay its 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 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 of the making of the decision concerned; 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; 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***31 Remuneration of auditors**

The NZPGA must remunerate a person appointed as an auditor under section 15 of the Commodity Levies Act 1990 at a rate determined by the Minister for Primary Industries after consultation with the NZPGA.

Michael Webster,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 14 August 2014.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Passionfruit) Order 2014 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*

Subordinate Legislation (Confirmation and Validation) Act 2015 (2015 No 119): section 10(b)
Commodity Levies (Passionfruit) Amendment Order 2015 (LI 2015/56)