

Reprint
as at 17 December 2016



Commodity Levies (Winegrapes) Order 2016 (LI 2016/114)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 30th day of May 2016

Present:

His 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 for Primary Industries made after meeting the requirements in 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 (Winegrapes) Order 2016.

2 Commencement

This order comes into force on 1 July 2016.

Order: confirmed, on 17 December 2016, by section 9(b) of the Subordinate Legislation Confirmation Act 2016 (2016 No 103).

3 Interpretation

In this order, unless the context otherwise requires,—

buyer means a person who buys winegrapes, or grape juice or grape juice concentrate made from winegrapes, in New Zealand from the grower of the grapes

Director-General means the chief executive of the department that has, with the authority of the Prime Minister, responsibility for the administration of the Commodity Levies Act 1990

farm-gate price means the price paid to buy winegrapes from their grower (excluding GST)

free on-board value means the value of winegrapes specified in the declaration attached to, or forming part of, the Customs entry for the grapes (excluding GST)

grape juice means the juice of winegrapes

grape juice concentrate means grape juice that has been concentrated by removing water from it

grape wine has the same meaning as in clause 3 of the Wine (Grape Wine Levy) Order 2016

grower means a person whose business is or includes—

- (a) growing winegrapes for sale or export; or
- (b) growing winegrapes to make grape juice, or grape juice concentrate, for sale or export

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

levy—

- (a) means the levy imposed by clause 4; and
- (b) includes any additional levy imposed under clause 17

levy money means money paid under this order as a levy

levy year means a period of 12 months starting on 1 July and ending on 30 June of the following year

mediator means a person appointed under clause 29 and, in relation to a dispute, means a mediator appointed to resolve the dispute

Minister means the Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Commodity Levies Act 1990

New Zealand Winegrower or its replacement means—

- (a) the publication known on the commencement of this order as *New Zealand Winegrower*; or
- (b) any publication that replaces *New Zealand Winegrower*; or
- (c) if *New Zealand Winegrower* stops being published and is not replaced, a publication that the Minister specifies by notice in the *Gazette*

notional price means the price set for winegrapes under clause 8 (excluding GST)

NZW means the incorporated society known as New Zealand Winegrowers Incorporated

winegrapes means grapes of the genus *Vitis* that are grown in New Zealand to make wine, grape juice, or grape juice concentrate.

Levy imposed

4 **Levy imposed**

A levy is imposed on winegrapes that—

- (a) are grown for sale or export; or
- (b) are grown to make grape juice, or grape juice concentrate, for sale or export.

Responsibility for paying levy

5 **Grower primarily responsible for paying levy**

The grower of the winegrapes is primarily responsible for paying the levy on the grapes.

6 **Person who must pay levy**

- (1) Unless subclause (2) applies, if winegrapes, or grape juice or grape juice concentrate made from winegrapes, are sold by or on behalf of the grower,—
 - (a) the buyer must pay the levy on the grapes; and
 - (b) the buyer may recover from the grower any amount the buyer pays as the levy (and any GST payable on the levy) by deducting it from any amount payable to the grower; but
 - (c) the buyer may not charge a fee for paying the levy or recovering the amount paid as the levy from the grower.

- (2) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are exported by or on behalf of the grower, the grower must pay the levy on the grapes.

Rate of levy

7 Basis for calculation of levy

The levy on winegrapes must be calculated,—

- (a) for winegrapes sold by or on behalf of the grower, on the basis of the farm-gate price of the grapes (unless paragraph (b) applies):
- (b) for winegrapes exported by or on behalf of the grower, on the basis of the free on-board value of the grapes:
- (c) for winegrapes made into grape juice or grape juice concentrate that is sold or exported, by or on behalf of the grower, on the basis of the notional price of the grapes.

8 Notional price of winegrapes made into grape juice or concentrate

- (1) The notional price of winegrapes for a levy year is the notional price set by NZW for those grapes in accordance with its rules and as soon as practicable, but in any case before 31 December, in that levy year.
- (2) NZW must set the notional price of winegrapes at the price (excluding GST) that, in NZW's opinion, the grower would receive for grapes of that variety if, immediately before the grapes were made into grape juice or grape juice concentrate, the grower had sold them to a processor in the same region to make into grape juice or grape juice concentrate (whether or not such a processor existed).
- (3) A notional price takes effect on and from the date it is set under subclause (1).
- (4) As soon as practicable after setting a notional price, NZW must notify the price—
 - (a) in the *Gazette*; and
 - (b) in *New Zealand Winegrower* or its replacement; and
 - (c) directly to all growers and buyers whose contact details are known to NZW.

9 Levy to be paid at single rate

The levy must be paid at a single rate.

10 Maximum rate of levy

The maximum rate of the levy on winegrapes is 1.5% of the farm-gate price, free on-board value, or notional price of the grapes.

11 Actual rate of levy set by NZW

- (1) The actual rate of the levy for a levy year is the rate set by NZW, in accordance with its rules, before the start of that levy year.
- (2) For the first levy year, the actual rate may be set by NZW, in accordance with its rules, before the commencement of this order.

12 Previous rate applies if new rate not set

The following rate of the levy continues to apply until a new rate is set under clause 11:

- (a) the rate last set under clause 11; or
- (b) if a rate has never been set under clause 11, the rate that applied immediately before the commencement of this order.

13 Notification of rate of levy

As soon as practicable after setting a rate of the levy for a levy year, NZW must notify the rate—

- (a) in the *Gazette*; and
- (b) in NZW's newsletter; and
- (c) in *New Zealand Winegrower* or its replacement; and
- (d) directly to all growers and buyers whose contact details are known to NZW.

14 Maximum levy payable for levy year

- (1) The maximum amount of the levy payable by a grower for a levy year is \$150,000.
- (2) The amount specified in this clause does not include any additional levy payable under clause 17.

Payment of levy

15 Levy to be paid to NZW

The levy must be paid to NZW.

16 When levy must be paid

- (1) Unless subclause (2) applies, if winegrapes, or grape juice or grape juice concentrate made from winegrapes, are sold by or on behalf of the grower,—
 - (a) in the case of grapes, juice, or concentrate to be paid for by 2 or more instalments, the due date for paying the levy to which an instalment relates is the day on which the buyer is liable to pay the instalment for the grapes, juice, or concentrate; or

- (b) in any other case, the due date for paying the levy is the day on which the buyer is liable to pay for the grapes, juice, or concentrate.
- (2) If winegrapes, or grape juice or grape juice concentrate made from winegrapes, are exported by or on behalf of the grower,—
 - (a) in the case of grapes, juice, or concentrate to be paid for by 2 or more instalments, the due date for paying the levy to which an instalment relates is the day on which the grower is entitled to be paid the instalment for the grapes, juice, or concentrate; or
 - (b) in any other case, the due date for paying the levy is the day on which the grower is entitled to be paid for the grapes, juice, or concentrate.
- (3) The latest date for paying any levy is the 20th day of the month after the month in which the levy is due to be paid.

17 Additional levy payable if levy not paid in time

- (1) This clause applies if a grower or buyer does not pay any amount of the levy (including any GST payable on the levy) on or before the last day for payment.
- (2) NZW may (at its discretion), at the end of each month during which the amount remains unpaid, impose an additional levy of 10% of the unpaid amount (including any unpaid additional levy already imposed under this clause).

Spending of levy money

18 Levy money must be spent

- (1) NZW may pay the levy money to any of its branches or subsidiaries.
- (2) NZW and its branches or subsidiaries must—
 - (a) spend all the levy money paid to them; and
 - (b) invest the levy money until it is spent.

19 How levy money to be spent

- (1) NZW and its branches and subsidiaries may spend the levy money, at a national or regional level, for the following purposes relating to winegrapes or grape wine:
 - (a) research and development relating to, and other programmes or services for, the New Zealand winegrape and grape wine industry;
 - (b) representation of, and advocacy for, the interests of the New Zealand winegrape and grape wine industry;
 - (c) the enhancement and protection of the integrity and reputation of New Zealand grape wine in New Zealand and overseas;
 - (d) the collection, analysis, and dissemination of information:

- (e) research and development relating to viticulture, oenology, and other relevant disciplines:
 - (f) market research and development:
 - (g) the promotion of winegrapes and grape wine:
 - (h) education and training:
 - (i) technology transfer:
 - (j) the development and maintenance of standards, codes of practice, sustainability programmes, and quality assurance programmes:
 - (k) the protection and improvement of vine health:
 - (l) the implementation of legislation and regulatory programmes:
 - (m) funding activities undertaken for the New Zealand winegrape and grape wine industry by government and other agencies:
 - (n) the day-to-day administration of NZW and its branches and subsidiaries.
- (2) NZW and its branches and subsidiaries must not spend the levy money on commercial or trading activities.

20 Consultation on how levy money to be spent

- (1) NZW must, at least every 12 months,—
- (a) consult growers on how the levy money is proposed to be spent; and
 - (b) provide growers with details of how the levy money was spent in the previous 12 months.
- (2) For the purposes of subclause (1), NZW must—
- (a) communicate with growers by using 1 or more of the following methods of communication:
 - (i) sending regular newsletters to growers whose contact details are known to NZW;
 - (ii) communicating in *New Zealand Winegrower* or its replacement;
 - (iii) communicating, in accordance with NZW's rules, with the Regional Membership Council of NZW (which must include representatives from winegrower regional organisations);
 - (iv) using any other method to communicate with growers that NZW thinks fit; and
 - (b) before NZW approves a budget to spend the levy money for a levy year,—
 - (i) provide to growers its draft budget and plan for spending that levy money by using 1 or more of the methods referred to in paragraph (a); and

- (ii) give growers an opportunity to comment on the draft budget and plan; and
- (c) at each annual general meeting, present the annual accounts and annual report of NZW.

Record-keeping and information requirements

21 Returns provided by growers and buyers

- (1) A grower or buyer must accompany each of its levy payments with a return that specifies,—
 - (a) for winegrapes that are sold (but not exported), the amount, the variety, and the farm-gate price;
 - (b) for winegrapes that are exported, the amount, the variety, and the free on-board value;
 - (c) for grape juice or grape juice concentrate that is sold or exported, the amount, the notional price, and the variety of the winegrapes from which the grape juice or grape juice concentrate is made.
- (2) NZW may write to a grower or buyer requesting any information that NZW needs to calculate an amount of levy to be paid by the grower or buyer.
- (3) The grower or buyer must provide the information to NZW in writing as soon as is reasonably practicable after receiving the request.

22 Growers must keep records

- (1) A grower of winegrapes must keep records of the following matters for each individual sale or export of the grapes, or of grape juice or grape juice concentrate made from the grapes:
 - (a) the quantity of grapes, juice, or concentrate sold or exported;
 - (b) the variety or varieties of grape;
 - (c) the full name of the buyer or importer of the grapes, juice, or concentrate;
 - (d) the price received;
 - (e) the quantity of grapes made into juice or concentrate (if any);
 - (f) if the grower paid a levy to NZW,—
 - (i) the amount or amounts of the levy paid; and
 - (ii) when the amount or amounts of the levy were paid;
 - (g) if the grapes, juice, or concentrate were exported, a copy of any declaration attached to, or forming part of, the Customs entry for their export.
- (2) The grower must retain records for 2 years after the end of the levy year to which they relate.

23 Buyers must keep records

- (1) A buyer must keep records of the following matters for each purchase of winegrapes, or of grape juice or grape juice concentrate made from winegrapes:
 - (a) the quantity of grapes, juice, or concentrate purchased:
 - (b) the variety or varieties of grape:
 - (c) the full name of the grower of the grapes:
 - (d) the price paid:
 - (e) the amount or amounts of the levy that the buyer paid to NZW:
 - (f) when the amount or amounts of the levy were paid.
- (2) The buyer must retain records for 2 years after the end of the levy year to which they relate.

24 NZW must keep records

- (1) NZW must keep records of the following matters:
 - (a) each payment of the levy money received by NZW, including—
 - (i) the amount received; and
 - (ii) the date on which NZW received it; and
 - (iii) the name and contact details of the person who paid it:
 - (b) how and when the levy money was invested (if at all):
 - (c) how and when the levy money was spent.
- (2) NZW must retain the records for 2 years after the end of the levy year in which the payment, investment, or spending happened.

25 Confidentiality of information

- (1) An officer, employee, or agent of NZW must not disclose any information obtained, or obtained as a result of actions taken,—
 - (a) under 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, employee, or agent of NZW; 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 growers.

Miscellaneous provisions

26 GST excluded

The maximum rate of the levy and any amounts referred to in this order are exclusive of GST.

27 Conscientious objectors

- (1) A grower or buyer who objects on conscientious or religious grounds to paying an amount of the levy to NZW may instead pay the amount to the Director-General.
- (2) The Director-General must pay the amount to NZW.

28 Remuneration of auditors

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

Mediation of disputes

29 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 the 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 35.

30 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) set 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).

31 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, set by the mediator and notified in writing to the parties.

32 Conference to be held in private

- (1) Only the mediator and the parties to a dispute may attend a conference.
- (2) However, the 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.

33 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.

34 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.
- (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.

35 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve the 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.

36 Costs of mediation

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

37 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 35 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 of the decision; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) set 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.

38 Revocation of Commodity Levies (Winegrapes) Order 2010

The Commodity Levies (Winegrapes) Order 2010 (SR 2010/191) is revoked.

Michael Webster,
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 comes into force on 1 July 2016. It revokes the Commodity Levies (Winegrapes) Order 2010.

This order imposes a levy on winegrapes that are grown in New Zealand to make wine, grape juice, or grape juice concentrate for sale or export.

The levy is payable to New Zealand Winegrowers Incorporated (**NZW**), which is the industry body for both winegrapes and grape wine that replaces the New Zealand Grape Growers Council Incorporated and the Wine Institute of New Zealand Incorporated. The grower of the winegrapes is primarily responsible for paying the levy. However, in some circumstances the buyer of the winegrapes may be required to pay the levy but may recover it from the grower.

The levy may be used for the purposes of the winegrape and grape wine industry (and NZW also administers the levy under the Wine (Grape Wine Levy) Order 2016 for those purposes).

The Commodity Levies (Winegrapes) Order 2010 is revoked. However, the revocation does not affect obligations that arose before 1 July 2016 to pay the previous levy to the previous industry body (*see* section 17 of the Interpretation Act 1999).

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2017 unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of the Legislation Act 2012. If this order is confirmed, it will, under section 13 of the Commodity Levies Act 1990, be deemed to be revoked 6 years after it is made, unless it is revoked or extended before then.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 2 June 2016.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Winegrapes) Order 2016 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 Act 2016 (2016 No 103): section 9(b)