



Commodity Levies (Harvested Wood Material) Order 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 23rd day of September 2019

Present:

Her 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 of Forestry given in accordance with sections 5 and 6 of that Act.

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Order

1 Title

This order is the Commodity Levies (Harvested Wood Material) Order 2019.

2 Commencement

This order comes into force on 18 November 2019.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

Director-General means the chief executive of the Ministry for Primary Industries

FGLT means the incorporated society that, on the commencement of this order, was known as the Forest Growers Levy Trust Incorporated

forest owner means the owner of trees in a plantation forest in New Zealand, whether or not—

- (a) that owner owns the land on which the trees are planted; or
- (b) cutting rights to the trees have been granted to another person

Forest Strategy and Roadmap means *A Forestry Roadmap for Aotearoa New Zealand, 2020–2050*, published in March 2019 by the New Zealand Forest Owners Association, or the most recent strategic plan relating to forestry that is later published by the New Zealand Forest Owners Association

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

harvested wood material—

- (a) means any material that is, or is derived from, trees harvested from a plantation forest; and
- (b) without limitation, includes logs, woodchips, bin wood, posts, hogged material, and forest waste; but
- (c) does not include Christmas trees or tree bark separated from logs

levy means the levy imposed by clause 4

levy money means money paid or payable under this order as a levy

levy payer means any person who is responsible for paying levy money

levy rate means the rate fixed under clause 14

levy year means,—

- (a) for the first levy year, the period that begins on 18 November 2019 and ends on 31 December 2020; and
- (b) for each subsequent year (other than the last year), the period of 12 months that begins on 1 January and ends on 31 December; and
- (c) for the last levy year, the period that begins on 1 January 2025 and ends on 17 November 2025

mediator means—

- (a) a person appointed under clause 24; and
- (b) for a particular dispute, the mediator appointed to resolve the dispute

National Forest Health Surveillance Scheme means the programme of monitoring the pest and disease status of New Zealand forests administered by the organisation that, on the commencement of this order, was known as the New Zealand Forest Owners Association

New Zealand Forest Owners Association means the incorporated society that, at the commencement of this order, was known as The New Zealand Forest Owners Association Incorporated

plantation forest—

- (a) means any forest (whether exotic or native) that has grown as a result of being planted; and
- (b) includes any regenerated planted forest.

Levy imposed

4 Levy on harvested wood material

- (1) This order imposes a levy on all harvested wood material from plantation forests in New Zealand.
- (2) The levy must be paid to FGLT.

Paying levy

5 Persons responsible for paying levy

- (1) Forest owners are primarily responsible for paying the levy (including any GST).
- (2) No forest owner is exempt from paying the levy (including any GST).
- (3) The owner of harvested wood material at the time that the levy becomes payable is responsible for paying the levy and any GST payable on the levy.
- (4) Any person who is not a forest owner and who pays the levy may recover the levy and any GST payable on the levy from a forest owner—
 - (a) by deducting the amount of the levy from the payment for harvested wood material made to the forest owner; or
 - (b) as a debt due from the forest owner.

6 When levy becomes payable

The levy on harvested wood material becomes payable on the earliest of the following:

- (a) immediately before the material enters a mill or other processing plant;
- (b) immediately after the material enters a port;
- (c) when the material is sold.

7 No collection fee

A person who is not a forest owner and who is responsible for paying the levy to FGLT—

- (a) must not deduct from the levy a collection fee for paying the levy; but
- (b) may recover the levy (including any GST payable on it) from the forest owner by invoicing them for the levy.

8 Conscientious objectors

- (1) Any levy payer who objects on conscientious or religious grounds to paying the levy in the manner provided for in this order may pay the amount to the Director-General.
- (2) The Director-General must pay the amount to FGLT.

9 When levy payable by levy payers

- (1) At the beginning of each month, FGLT must send to each levy payer an invoice for the levy payable and any GST payable on the levy.
- (2) The due date for paying the levy (including any GST) is the date on which the invoice is issued.
- (3) The latest date for payment of the levy (and any GST) is the 20th day of the month after the month in which the invoice is issued.

10 Additional levy for late payment

If a forest grower does not pay an amount of levy money by the required date, the forest grower must pay FGLT,—

- (a) for the first month, an additional levy of 5% of the unpaid amount; and
- (b) for each subsequent month that the amount (or part of the amount) remains unpaid after the required date, an additional levy of 2% of the amount of the unpaid levy (not including any penalties).

*Settling levy rate***11 Basis for calculating levy**

FGLT must calculate the levy on harvested wood material on the basis of its weight in tonnes at the time that the levy becomes payable.

12 Levy must be paid at single rate

The levy must be paid at a single rate.

13 Maximum levy rate

The maximum rate of the levy is 33 cents per tonne of harvested wood material (excluding GST).

14 Fixing levy rate

- (1) The levy on harvested wood material for the first levy year (18 November 2019 to 31 December 2020) is 27 cents per tonne of wood material harvested.
- (2) For each subsequent year, the FGLT board must fix the levy rate before the start of the levy year in accordance with its decision-making rules.
- (3) If FGLT does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under this clause.

15 Notifying levy rate

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

- (a) in the *Gazette*; and
- (b) in the publication that, at the commencement of this order, was known as the *New Zealand Forestry News Bulletin*, or any equivalent publication later published by the New Zealand Forest Owners Association; and
- (c) in the publication that, at the commencement of this order, was known as the *New Zealand Forest Owners Association e-News*, or any equivalent publication later published by the New Zealand Forest Owners Association; and
- (d) in 1 or more metropolitan newspapers; and
- (e) by email to all levy payers whose email addresses are known to FGLT.

Spending levy money

16 FGLT must spend levy money

FGLT must—

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

17 Purposes for which levy money may be spent

- (1) FGLT may spend levy money for all or any of the following purposes relating to harvested wood material or forest growers:
 - (a) research and development:
 - (b) forest biosecurity:
 - (c) the National Forest Health Surveillance Scheme:
 - (d) training and careers:
 - (e) forestry workforce health and safety, including development and support for industry standards and codes:
 - (f) the Forest Strategy and Roadmap:
 - (g) programme development and implementation costs:

- (h) industry and product promotion:
 - (i) representing the interests of forest owners and the industry:
 - (j) administration costs.
- (2) FGLT must not spend levy money on commercial or trading activities.
 - (3) Subclause (2) overrides subclause (1).

18 Consulting on spending levy money

Each levy year, FGLT must consult levy payers and potential levy payers on how it proposes to spend levy money.

Returns, records, and confidentiality

19 Returns

- (1) FGLT may request, in writing, from each levy payer, port, mill, or other processing plant any information that FGLT reasonably requires to determine the amounts of levy payable by levy payers.
- (2) Any person who receives a request from FGLT must, as soon as is reasonably practicable after receiving the request, supply FGLT with a written return of the information requested.

20 Levy payers must keep records

Every levy payer must keep records of the following for each levy year, as applicable:

- (a) the weight in tonnes of harvested wood material sold directly from plantation forests:
- (b) the name and contact details of the person from which harvested wood material was received:
- (c) the weight in tonnes of harvested wood material supplied to ports, mills, or other processing plants:
- (d) the name and contact details of every person to which harvested wood material was sold or supplied:
- (e) each amount of levy paid to FGLT, including the date on which the amount of levy was paid to FGLT.

21 FGLT must keep records

FGLT must keep records of the following for each levy year:

- (a) the weight in tonnes of harvested wood material sold directly from plantation forests:
- (b) the name and contact details of the person from which harvested wood material was received:

- (c) the weight in tonnes of harvested wood material supplied to ports, mills, or other processing plants:
- (d) the name and contact details of every person to which harvested wood material was sold or supplied:
- (e) each amount of levy paid to FGLT, including the date on which the amount of levy was paid to FGLT:
- (f) how (if at all) levy money was invested:
- (g) how levy money was spent.

22 Records must be kept for 5 years

The records required by clauses 20 and 21 must be kept for at least 5 years from the date the levy was paid.

23 Confidentiality of information

- (1) No levy payer, port, mill, other processing plant, or officer or employee of FGLT may disclose (except to an officer or employee of FGLT) 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 any person from—
 - (a) producing records or accounts under section 17(1) of the Act:
 - (b) preparing any statement under section 25 of the Act:
 - (c) disclosing or using information as required by law:
 - (d) giving evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) under the Act in relation to this order.
- (3) FGLT may disclose or use information—
 - (a) for statistical or research purposes, if the information is in a form that does not identify any individual; or
 - (b) for the purpose of collecting levies; or
 - (c) with the consent of every identifiable person to whom the information relates.

Dispute resolution

24 Appointing mediators

- (1) This clause applies to a dispute about—
 - (a) whether any person is required to pay a 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 (the **President**) 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 when—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 31.

25 Remunerating 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, 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 under sub-clause (2).

26 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 post or email; and
- (c) preside at the conference.

27 Conferences must be held in private

Unless clause 28 applies, only the parties to a dispute may attend a conference with the mediator.

28 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.

29 Right to be heard

Each person who attends a conference may be heard at the conference.

30 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 their own initiative,—
 - (a) seek and receive any evidence that they think desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that they think desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference of the parties to verify the evidence by statutory declaration.

31 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) A mediator who resolves a dispute under subclause (1) must give each party written notice of the decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

32 Mediation costs

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

33 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to the 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 District Court must—
 - (a) fix the date, 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***34 Remunerating of compliance auditors**

FGLT must remunerate a person appointed as an auditor under section 15 of the Act at a rate agreed by the auditor and FGLT, after FGLT has consulted the Minister of Forestry.

*Revocation***35 Order revoked**

The Commodity Levies (Harvested Wood Material) Order 2013 (SR 2013/454) 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, which comes into force on 18 November 2019, imposes a levy on wood material harvested by owners of plantation forests in New Zealand. Forest owners are primarily responsible for paying the levy. The levy is payable to the Forest Growers Levy Trust Incorporated.

Before this order, a levy was imposed on harvested wood material by the Commodity Levies (Harvested Wood Material) Order 2013. This order revokes and replaces that order. The revocation does not affect amounts of levy money that became payable under that order before its revocation.

The order remains in force until the close of 17 November 2025. However, the order is a confirmable instrument under section 47B of the Legislation Act 2012, which means that it is revoked on the close of 31 December 2020 unless it is earlier confirmed by an Act of Parliament. The close of 31 December 2020 is the applicable deadline under section 47C(1)(b) of the Legislation Act 2012.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 26 September 2019.

This order is administered by the Ministry for Primary Industries.