



Commodity Levies (Feijoas) Order 2014

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 4th day of August 2014

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Administrator of the Government 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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Order

- 1 Title**
This order is the Commodity Levies (Feijoas) Order 2014.
- 2 Commencement**
This order comes into force on 4 September 2014.

3 Interpretation

In this order, unless the context otherwise requires,—

association means the organisation called the New Zealand Feijoa Growers Association Incorporated on 4 September 2014

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 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 5

levy year means,—

- (a) for the first levy year, the period starting on 4 September 2014 and ending on 31 July 2015;
- (b) for the final levy year, the period starting on 1 August 2019 and ending on 3 August 2020;
- (c) in every other case, a 1-year period starting on 1 August and ending on 31 July

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 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 feijoas produced in New Zealand by commercial growers for commercial purposes.

6 Calculation

The levy is to be calculated,—

- (a) for feijoas processed by or for the commercial grower in New Zealand, on the basis of the value of the unprocessed feijoas (exclusive of GST), which is itself calculated from the value (per kilogram) of unprocessed feijoas as set by the association at its annual general meeting for that levy year:
- (b) for feijoas sold by, or on behalf of, the grower in New Zealand, on the basis of the price of the feijoas (exclusive of GST) at the first point of sale:
- (c) for feijoas exported by, or on behalf of, the grower, on the basis of the FOB value of the feijoas (exclusive of GST).

7 Rate

- (1) The levy is to be paid at a single rate.
- (2) The association must set the actual levy rate for the first levy year in accordance with its rules.
- (3) The association must set the actual levy rate for each later levy year at either of the following meetings:
 - (a) the annual general meeting:
 - (b) a special general meeting called for the purpose.
- (4) The levy rate must not exceed 3% of the price or value that is the basis for the calculation of the levy under clause 6.
- (5) If the association does not set the actual levy rate for a levy year, the levy rate currently applying continues to apply.

8 When rate takes effect

- (1) The levy rate for the first levy year takes effect on and from the date it is notified in the association's newsletter under clause 9.
- (2) The levy rate for each later levy year takes effect on and from the later of the following:
 - (a) the date the levy year starts;
 - (b) the date the levy is set under clause 7(3).

9 Notification

- (1) The association must notify the actual levy rate in—
 - (a) *The Orchardist*; and
 - (b) the association's newsletter.
- (2) If *The Orchardist* or the association's newsletter ceases to be published, the actual levy rate 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 for Primary Industries specifies by notice in the *Gazette*.
- (3) The association must notify the actual levy rate as soon as practicable after setting it.

*Payment***10 Payee**

The levy is payable to the association.

11 Payers

- (1) Commercial growers are primarily responsible for paying the levy.
- (2) If a commercial grower uses a collection agent, the agent must pay the levy.
- (3) The collection agent may charge the association a collection fee of not more than 5% of the levy payable (exclusive of GST), plus the GST payable on the fee, by deducting the fee, plus GST, before paying the levy.
- (4) The collection agent may recover the levy on feijoas bought from the grower by—

- (a) deducting the amount of the levy from the payment made to the grower for the feijoas; and
 - (b) providing the grower with information about the amount of levy deducted.
- (5) The collection agent may recover the levy on feijoas sold or exported on the grower's behalf by recovering the amount of the levy as a debt due from the grower.

12 Conscientious objection to payee

If a commercial grower or collection agent objects on conscientious or religious grounds to paying the levy to the association,—

- (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 association.

13 Information to determine payment

- (1) The association 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.
- (2) The association must make the request by email or post.
- (3) The grower or agent must provide the information as soon as practicable.

14 Due and latest dates for payment

Due dates for payment

- (1) If a commercial grower's feijoas are processed by the grower or on the grower's behalf, the due date is the date on which the feijoas are processed.
- (2) If a commercial grower sells the grower's feijoas in New Zealand to anyone, including a collection agent, the due date is the date on which the grower sells the feijoas.
- (3) If a collection agent sells a commercial grower's feijoas in New Zealand on behalf of the grower, the due date is the date on which the agent sells the feijoas.

- (4) If a commercial grower exports the grower's feijoas, the due date is the earlier of the dates on which the feijoas are—
 - (a) loaded on an international carrier for export;
 - (b) sold overseas.
- (5) If a collection agent exports a commercial grower's feijoas on behalf of the grower, the due date is the earlier of the dates on which the feijoas are—
 - (a) loaded on an international carrier for export;
 - (b) sold overseas.

Latest date 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.

Spending

15 Purposes

- (1) The association must spend all levy paid to it for the following purposes:
 - (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 the levy on commercial or trading activities.
- (3) The association must invest the levy until it spends the levy.

16 Consultation

- (1) The association must, in each levy year,—
 - (a) provide commercial growers with details of how it spent the levy in the previous levy year; and
 - (b) consult growers on how it proposes to spend the levy in the current levy year.
- (2) For the purposes of subclause (1), the association must—
 - (a) prepare accounts of the levy received and spent in the previous levy year; and
 - (b) prepare a draft budget and draft plan of how it proposes to spend the levy in the current levy year; and

- (c) circulate them to all commercial growers a reasonable time before the annual general meeting, or a special general meeting, of the association.
- (3) The accounts, budget, and plan must be approved at the general meeting by the commercial growers who are members of the association.

Records

17 Commercial growers

- (1) A commercial grower must collect the following information for each levy year:
 - (a) each amount of levy paid to the association and the date of each payment:
 - (b) each quantity of feijoas processed by or for the commercial grower:
 - (c) each quantity of feijoas sold by the commercial grower and the price received for each quantity:
 - (d) each quantity of feijoas exported by the commercial grower and the FOB value of each quantity:
 - (e) the full name and contact details of each collection agent to whom feijoas are sold.
- (2) The grower must keep the information for at least 2 years after the end of the levy year to which it relates.

18 Collection agents

- (1) A collection agent must collect the following information for each levy year:
 - (a) each amount of levy paid to the association and the date of each payment:
 - (b) each quantity of feijoas purchased from a commercial grower and the price paid for each quantity:
 - (c) each quantity of feijoas sold by the collection agent on behalf of a commercial grower and the price received for each quantity:
 - (d) each quantity of feijoas exported by the collection agent on behalf of a commercial grower and the FOB value of each quantity:

- (e) the full name and contact details of each commercial grower referred to in paragraph (b), (c), or (d).
- (2) The collection agent must keep the information for at least 2 years after the end of the levy year to which it relates.

19 Association

- (1) The association must collect the following information for each levy year:
 - (a) the amount of each levy paid to it:
 - (b) when the levy was paid:
 - (c) who paid the levy:
 - (d) how it spent or invested all levy paid to it.
- (2) The association must keep the information for at least 2 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 association, or any person involved in collecting the levy, must not disclose the information to anyone other than an officer or employee of the association.
- (3) However, the association 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) determining the voting entitlements of commercial growers:
 - (e) counting the votes of commercial growers:
 - (f) statistical and research purposes that do not involve the disclosure of personal information:
 - (g) invoicing for and collecting levies.

*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

Only the parties to a dispute, the mediator, and representatives the mediator allows to attend may attend a conference organised by the mediator.

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 after the making of the decision concerned; or
 - (b) within any longer time 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 association 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 association.

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 imposes a levy on feijoas produced in New Zealand by commercial growers for commercial purposes. The levy is payable to the New Zealand Feijoa Growers Association Incorporated.

The order comes into force on 4 September 2014. It will be deemed to be revoked at the end of 31 December 2015 unless it is confirmed by an Act passed on or before that day (*see* section 12 of the Commodity Levies Act 1990 (the **Act**)). If the order is confirmed, it will be deemed to be revoked at the end of 3 August 2020 unless it is revoked or extended before then (*see* section 13 of the Act).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 7 August 2014.

This order is administered by the Ministry for Primary Industries.
