



Commodity Levies (Fresh Tomatoes) Order 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 25th day of February 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 Agriculture made in accordance with sections 5 and 6 of that Act.

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Order**1 Title**

This order is the Commodity Levies (Fresh Tomatoes) Order 2019.

2 Commencement

This order comes into force on 1 April 2019.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person whose business is or includes—

- (a) buying fresh tomatoes from a grower for resale or for export;
- (b) exporting or selling of fresh tomatoes on behalf of a grower

commercial processing means artificial drying, bottling, canning, evaporating, freezing, juicing, or preserving for commercial purposes

fresh tomatoes—

- (a) means tomatoes grown in New Zealand for commercial purposes; but
- (b) excludes tomatoes grown for commercial processing

grower means a person whose business is or includes the commercial production of fresh tomatoes

GST means goods and services tax

levy means a levy imposed by clause 4

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

levy rate means the rate fixed under clause 14

levy year means,—

- (a) for the first year, the period starting on the commencement of this order and ending on 30 September 2019; and
- (b) for each later year (other than the last year), the 12-month period starting on 1 October and ending on 30 September of the following year; and
- (c) for the last year, the period starting on 1 October 2025 and ending on the day on which this order is revoked

mediator means—

- (a) a person appointed under clause 26; and
- (b) for a particular dispute, the mediator appointed to resolve the dispute

TomatoesNZ means Tomatoes New Zealand Incorporated.

Levy imposed

4 Levy on fresh tomatoes

- (1) This order imposes a levy on fresh tomatoes.
- (2) The levy must be paid to TomatoesNZ.

*Paying levy***5 Growers primarily responsible for paying levy**

- (1) Growers of fresh tomatoes are primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

6 Collection agent must pay levy and may recover it from growers

- (1) A collection agent must, at the first point of sale, pay the levy, and any GST payable on it, if the collection agent—
 - (a) buys fresh tomatoes from a grower; or
 - (b) sells or exports fresh tomatoes on behalf of a grower.
- (2) A collection agent may recover a levy (and any GST paid in respect of it) from a grower—
 - (a) by deducting the amount of the levy (and any GST payable on it) from the payment made to the grower; or
 - (b) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.
- (3) A collection agent must disclose to a grower the amount of levy money deducted under this order.
- (4) A collection agent who pays a levy to TomatoesNZ may deduct from the levy a collection fee of not more than 4% of the amount of levy collected (exclusive of GST) plus the GST payable on the fee.

7 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to the manner of recovery of levy money by TomatoesNZ may pay the amount concerned to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to TomatoesNZ.

8 When levy payable by growers

- (1) If fresh tomatoes are sold directly to the public by growers, or exported by growers, the due date for payment of the levy by growers is 30 June.
- (2) The levy payable by growers must be paid annually for the preceding 12 months.
- (3) The last date for payment of the levy by growers is 30 September in the same calendar year.

9 When levy payable by collection agents

- (1) The due date for payment of the levy by a collection agent is the date on which the collection agent recovers the levy from the grower.

- (2) The last date for payment of the levy by the collection agent is the 20th day of the month after the month in which the levy is recovered from the grower.

10 Additional levy if levy not paid in time

- (1) If any amount of the levy (or GST payable on that amount) has not been paid by the close of the last day for payment, 5% of the amount of the levy not paid at the end of the first month must be paid to TomatoesNZ, in addition to the amount otherwise payable.
- (2) A further 2% of the amount owing (including any previous penalties) is payable at the end of each additional month in which the amount remains unpaid.

Setting levy rate

11 Basis for calculating levy

- (1) The levy payable in a levy year must be calculated on the basis of the gross sales value at the first point of sale, except where the commodity is exported, in which case the levy will be calculated on the price received by the grower after deduction of all offshore costs (including international freight).
- (2) A value referred to in subclause (1) is the value before the deduction of any costs or charges and is exclusive of GST.

12 Levy must be paid at single rate

The levy must be paid at a single rate.

13 Maximum levy rate

- (1) The maximum rate of the levy is 0.50% of—
 - (a) the price received at the first point of sale; or
 - (b) with respect to export sales, the price received by the grower after deduction of all offshore costs (including international freight).
- (2) The maximum rate of levy is exclusive of GST.

14 Fixing levy rate

- (1) The levy rate for the first levy year is 0.35%.
- (2) For each subsequent year, TomatoesNZ must fix the levy rate before the start of the levy year by a vote at the annual general meeting of TomatoesNZ.
- (3) If TomatoesNZ does not fix the levy rate before the start of a levy year, the levy for that year is the rate most recently fixed under this clause.

15 Notifying levy rate

- (1) If any new levy rate set under clause 14 differs from the levy rate applying in the previous year, TomatoesNZ must notify the new levy rate, as soon as practicable after setting the rate,—

- (a) in the *NZGrower*; and
 - (b) by direct mail to all growers and relevant collection agents known to TomatoesNZ.
- (2) If the *NZGrower* ceases to be published, the Minister of Agriculture may, by notice in the *Gazette*, specify another publication for the purposes of this order.

Spending levy money

16 TomatoesNZ must spend levy money

TomatoesNZ must—

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

17 Purposes for which levy money may be spent

- (1) TomatoesNZ may spend levy money derived from the levy on fresh tomatoes for the following purposes:
- (a) research and development:
 - (b) market development and promotion:
 - (c) development of quality assurance:
 - (d) education and training:
 - (e) information and communication:
 - (f) biosecurity activities:
 - (g) day-to-day administration of TomatoesNZ:
 - (h) grower representation.
- (2) TomatoesNZ must not spend levy money on commercial or trading activities.

18 Consulting on spending levy money

Each levy year, TomatoesNZ must consult on how it proposes to spend levy money by consulting—

- (a) grower representatives; and
- (b) growers at the annual general meeting of TomatoesNZ.

Returns, records, and confidentiality

19 Returns

- (1) A payment of levy money to TomatoesNZ by a grower or collection agent must state—
- (a) the value of fresh tomatoes to which the payment relates, broken down by domestic and export sales; and

- (b) in the case of a return by a collection agent, the full name, postal address, email address, and telephone contact details of the grower.
- (2) TomatoesNZ may, in writing, request from a grower or collection agent any information that TomatoesNZ reasonably requires for the purpose of determining the amount of levy payable by the grower.
- (3) Each grower and each collection agent must, as soon as is reasonably practicable after receiving a request from TomatoesNZ, supply TomatoesNZ with a written return of the information requested.

20 Growers must keep records

- (1) A grower who pays a levy directly to TomatoesNZ must, for each levy year, keep records of—
 - (a) the amount of the levy paid; and
 - (b) the sales that the levy money was deducted from.
- (2) A grower whose levies are paid by collection agents must, for each levy year, keep records of—
 - (a) the amount of the levy paid; and
 - (b) the sales that the levy money was deducted from; and
 - (c) the name and address of the collection agent.

21 Collection agents must keep records

A collection agent must, for each levy year, keep records of—

- (a) the amount of the levy paid; and
- (b) the sales that the levy money was deducted from; and
- (c) the details of each grower from whom the agent has collected levies (including the grower's name, trading name, and postal address).

22 TomatoesNZ must keep records

TomatoesNZ must, in each levy year, keep records of,—

- (a) for each amount of levy paid to it in that year, and in relation to each amount,—
 - (i) the date on which each levy is received; and
 - (ii) the person who pays the levy in each case; and
- (b) how levy money—
 - (i) is spent; or
 - (ii) is invested (if at all).

23 Records must be kept for 2 years

The records made under clauses 20 to 22 must be kept for at least 2 years after the date on which the levy to which they relate is paid.

24 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) A person must not disclose information to anyone other than an officer or employee of TomatoesNZ unless the disclosure is—
 - (a) the giving of evidence in any legal proceedings taken in relation to this order; or
 - (b) required by law; or
 - (c) the production of records or accounts under section 17(1) of the Act; or
 - (d) the production of any statement under section 25 of the Act.
- (3) TomatoesNZ may disclose information—
 - (a) for statistical or research purposes that do not require the disclosure of personal information; or
 - (b) for the purpose of invoicing or collecting the levy; or
 - (c) for the purpose of communicating with and supporting a levy-paying grower, provided the information relates only to that grower; or
 - (d) if every identifiable person to whom the information relates consents; or
 - (e) as required by law.

*Compliance audits***25 Remunerating auditors**

TomatoesNZ must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with TomatoesNZ.

*Dispute resolution***26 Appointment of mediators**

- (1) This clause applies to a dispute about—
 - (a) whether any person is required to pay the levy; or
 - (b) the amount of the 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 33.

27 Remunerating mediators

- (1) A mediator must 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).

28 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 of the matters specified in paragraph (a) by post or email; and
- (c) preside at the conference.

29 Conference must be held in private

Unless clause 30 applies, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

30 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.

31 Right to be heard

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

32 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.

33 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 of the parties written notice of the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

34 Mediation costs

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

35 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 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.

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 1 April 2019, imposes a levy on fresh tomatoes grown in New Zealand for commercial purposes. Growers are primarily responsible for the payment of the levy. The levy is payable to Tomatoes New Zealand Incorporated.

This order replaces, in part, the Commodity Levies (Vegetables and Fruit) Order 2013, which is revoked by the Commodity Levies (Vegetables and Fruit) Order 2019.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2020, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked at the end of 31 March 2025 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 28 February 2019.

This order is administered by the Ministry for Primary Industries.