



## Biosecurity (Response—Avocado Levy) Order 2019

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 11th day of March 2019

Present:

Her Excellency the Governor-General in Council

This order is made under section 100ZB of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity given after being satisfied of the matter described in section 100ZB(6) of that Act.

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## Order

### 1 Title

This order is the Biosecurity (Response—Avocado Levy) Order 2019.

### 2 Commencement

This order comes into force on 11 April 2019.

### 3 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Biosecurity Act 1993

**agreement**—

- (a) means the deed; and
- (b) includes any operational agreement of the kind referred to in section 100Z(3) of the Act that is made between—
  - (i) the Director-General; and
  - (ii) NZAGA

**avocados** means fruit of any tree of the species *Persea americana*

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

- (a) buying avocados from a grower for resale in New Zealand, or for export; or

- (b) selling avocados in New Zealand on behalf of a grower, or exporting avocados on behalf of a grower

**deed—**

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZAGA on 25 February 2016 (as may be revised or amended from time to time); and
- (b) includes a deed of the kind described in section 100Z(2) of the Act that replaces the deed referred to in paragraph (a)

**export** means the sale of avocados—

- (a) by a grower to a market other than in New Zealand; or
- (b) by a grower to a collection agent for sale to a market other than in New Zealand; or
- (c) by a collection agent to a market other than in New Zealand

**export avocados** means avocados that are—

- (a) grown in New Zealand by a grower; and
- (b) exported; and
- (c) not processed before export

**grower** means a person whose business is, or includes, the growing, and selling or export, of avocados

**GST** means goods and services tax

**levy** means the levy imposed by clause 4

**levy money** means the money paid under this order as a levy

**levy rates** means the levy rates described in clause 7

**levy year** means,—

- (a) for the first levy year, the period that begins on 11 April 2019 and ends on 30 April 2020; and
- (b) for each subsequent year, the period of 12 months that begins on 1 May and ends on 30 April

**New Zealand market avocados** means avocados that are—

- (a) grown in New Zealand by a grower; and
- (b) sold in New Zealand for consumption as fresh fruit

**NZAGA** means the N.Z. Avocado Growers Association Incorporated

**processed—**

- (a) means any process that is applied to avocados; and
- (b) includes avocados that are puréed, pulped, dried, freeze dried, dehydrated, evaporated, preserved, frozen, juiced, canned, or bottled, or from

which oil has been extracted, whether or not other ingredients are added to the avocados

**response activity** has the meaning given in section 100Y(3) of the Act

**selling price** means the price at which avocados are sold at the first point of sale—

- (a) exclusive of GST; and
- (b) before the deduction of any costs or charges

**tray equivalent** means 5.5 kilograms in weight of avocados.

#### **4 Levy imposed**

- (1) A levy is imposed on—
  - (a) all New Zealand market avocados; and
  - (b) all export avocados.
- (2) The levy is payable to NZAGA.

#### **5 How levy may be spent**

- (1) NZAGA must spend all levy money paid to it on meeting its commitments relating to response activities under the agreement.
- (2) NZAGA may invest levy money until it is spent.

#### *Determination of levy*

#### **6 Basis for calculating levy**

The levy must be calculated as follows:

- (a) for New Zealand market avocados, on the basis of the selling price;
- (b) for export avocados, on the basis of the number of tray equivalents.

#### **7 Different rates of levy apply**

Different levy rates apply to—

- (a) New Zealand market avocados; and
- (b) export avocados.

#### **8 Maximum rate of levy**

The maximum rate of levy is—

- (a) 0.25% of selling price (plus GST, if any) for New Zealand market avocados; and
- (b) 5 cents (plus GST, if any) per tray equivalent for export avocados.

#### **9 Rate of levy payable**

- (1) The levy rate for—

- (a) New Zealand market avocados is 0.00 cents; and
  - (b) export avocados is 0.00 cents.
- (2) This clause is subject to clause 10.

**10 Power to vary rate of levy**

- (1) NZAGA may vary the levy rates with the approval of its members at an annual general meeting.
- (2) NZAGA may vary the levy rates with the approval of its board if, under the agreement, NZAGA is required to contribute to the costs of a response activity.
- (3) NZAGA must vary the levy rates (except a levy rate of zero) if, under the agreement, no further levy money is needed to meet NZAGA's response activity commitments under the agreement.
- (4) When varying a levy rate under this clause, NZAGA must set—
- (a) the varied rate at a level that is sufficient, but does not exceed what is necessary, to enable NZAGA to meet its response activity commitments under the agreement; and
  - (b) a starting date for the varied rate that is after the date on which NZAGA gives notice under subclause (5).
- (5) NZAGA must notify the varied rates and their starting date—
- (a) in the *Gazette*; and
  - (b) in the industry organisation's newsletter; and
  - (c) by post or email to all growers and collection agents known to NZAGA (whether or not those growers or collection agents are members of NZAGA).
- (6) One or more of the levy rates set in accordance with this clause may be set at zero.

*Payment of levy*

**11 Grower primarily responsible for payment of levy**

The grower is the person primarily responsible for paying the levy.

**12 No exemptions from responsibility for payment of levy**

There are no exemptions for growers from the responsibility for the payment of the levy under clause 11.

**13 Collection agent responsible for collecting levy**

A collection agent is responsible for collecting the levy unless the grower pays the levy money to NZAGA or the Director-General.

**14 Responsibility of collection agent for payment of levy**

- (1) A collection agent must pay the levy to NZAGA if the collection agent—
  - (a) buys avocados from growers (except through another collection agent) for resale in New Zealand, or for export, as the case may be; or
  - (b) sells avocados in New Zealand on behalf of growers, or exports them on behalf of growers, as the case may be.
- (2) The collection agent may recover the levy from the grower—
  - (a) by deducting the amount of the levy from the payment made to the grower; or
  - (b) by recovering the amount of the levy as a debt due from the grower.

**15 When levy payable by collection agent**

- (1) The due date for payment by a collection agent of the levy for New Zealand market avocados is the earlier of—
  - (a) the date when the grower sells the avocados to the collection agent; and
  - (b) the date when the collection agent sells the avocados on behalf of the grower.
- (2) The due date for payment of the levy for export avocados is the date on which the avocados are first sold.
- (3) For the purposes of subclauses (1) and (2), the latest date for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.
- (4) In the case of export avocados, NZAGA may, in its absolute discretion, grant an extension of time for paying the levy if offshore terms of trade for the sale of the avocados have not been finalised before the latest date for payment of the levy.

**16 Responsibility of grower for paying levy**

A grower who does not sell their avocados through a collection agent must pay the levy to NZAGA.

**17 When levy payable by grower**

- (1) The due date for payment of the levy for New Zealand market avocados by a grower who must pay the levy to NZAGA is on 30 April next following the date of sale.
- (2) The latest date for payment of the levy referred to in subclause (1) is the 20 May following the end of the levy year in which the avocados were sold.
- (3) The due date for payment of the levy for export avocados by a grower who must pay the levy to NZAGA is the date on which the avocados are first sold.

- (4) For the purposes of subclause (3), the latest date for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.
- (5) In the case of export avocados, NZAGA may, in its absolute discretion, grant an extension of time for paying the levy if offshore terms of trade for the sale of the avocados have not been finalised before the latest date for payment of the levy.

#### **18 Collection agent or grower must make returns to NZAGA**

- (1) A collection agent or grower must provide a completed return to NZAGA when paying the levy.
- (2) The return must be in the form approved by NZAGA.
- (3) The return must include, in relation to the levy being paid,—
  - (a) the quantity of avocados bought or sold; and
  - (b) the date or dates on which the avocados were bought or sold; and
  - (c) the amount of levy paid by or on behalf of each grower; and
  - (d) the name or names of the grower or growers of the avocados, if the return is made by a collection agent.

#### **19 Collection fee must not be charged**

A collection agent is not entitled to charge a fee for collecting the levy.

#### *Miscellaneous*

#### **20 Records**

- (1) This clause applies if a grower or collection agent pays levy money to a collection agent, NZAGA, or the Director-General.
- (2) In the case of New Zealand market avocados, every grower and collection agent must, in each levy year, keep records of—
  - (a) the number of tray equivalents of avocados sold; and
  - (b) the name of the grower or collection agent; and
  - (c) the price received or paid, or the value placed on the avocados; and
  - (d) the amount of the levy paid to NZAGA or the Director-General.
- (3) In the case of export avocados, every grower and collection agent must, in each levy year, keep records of—
  - (a) the name and any official mark that identifies the grower for export purposes (for example, the Property Identification Number); and
  - (b) the number of tray equivalents of avocados exported; and
  - (c) the price received or paid for, or the value placed on, the avocados; and
  - (d) the amount of the levy paid to NZAGA or the Director-General.

- (4) NZAGA must, in each levy year, keep records of—
  - (a) each amount of levy paid to it in the levy year, the date on which each levy is received, and the person who pays the levy in each case; and
  - (b) the manner in which the levy money is spent or invested.
- (5) The records referred to,—
  - (a) in subclauses (2) and (3), must be kept for at least 10 years after the date of payment of the levy to which the records relate; and
  - (b) in subclause (4), must be kept for at least 10 years after the end of the levy year to which the records relate.
- (6) A grower or collection agent who is required to keep records must provide NZAGA with information from the records as soon as is reasonably practicable after receiving a written request from NZAGA for the information.

## **21 Conscientious objectors**

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to NZAGA.

## **22 Remuneration payable to auditor**

- (1) An auditor appointed under section 100ZF of the Act is entitled to receive remuneration (as provided for under section 100ZF(8) of the Act) for the auditor's fees and allowances.
- (2) The fees and allowances referred to in subclause (1) are payable by NZAGA at a rate agreed to by the Minister and NZAGA.

### *Arbitration in case of dispute*

## **23 Appointment of arbitrator**

- (1) This clause applies to any dispute about—
  - (a) whether a person is required to pay the levy; or
  - (b) the amount of levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties to a dispute are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with Schedule 1 of the Arbitration Act 1996.
- (4) For the purposes of the Arbitration Act 1996,—
  - (a) an agreement under subclause (2) is an arbitration agreement; and
  - (b) the arbitrator (whether appointed by agreement or under subclause (3)) is an arbitral tribunal.



**24 Application of Arbitration Act 1996 to dispute**

- (1) Subject to clause 26, the provisions of the Arbitration Act 1996 (including the provisions for procedures to be followed by an arbitral tribunal) apply to the resolution of a dispute submitted to arbitration under this order.
- (2) However, the provisions of this order prevail if there is any inconsistency between those provisions and the provisions of the Arbitration Act 1996.

**25 Payment of arbitration costs**

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under Schedule 2 of the Arbitration Act 1996.

**26 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or 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 notify the appellant and the other parties to the dispute; and
  - (b) serve a copy of the notice of appeal on all parties to the dispute.
- (4) Any party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

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 11 April 2019, imposes a levy on avocados that are grown in New Zealand and sold in New Zealand or exported. The grower is primarily responsible for the levy payment. The levy must be collected by a collection agent unless the grower does not sell their avocados through a collection agent and pays the levy to the Director-General or the N.Z. Avocado Growers Association Incorporated (NZAGA).

NZAGA is the avocado industry sector organisation under Part 5A of the Biosecurity Act 1993 (the **Act**). Part 5A of the Act concerns agreements between Government and industry organisations to deal with unwanted organisms, including agreements for jointly funding the costs of response activities.

NZAGA must spend the levy money paid to it on meeting its commitments for contributing to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZAGA on 25 February 2016 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and NZAGA.

*Clause 9* sets the levy rates for export avocados and New Zealand market avocados at zero cents, but these rates may be varied under *clause 10* if, for example, a response activity is needed for an unwanted organism and NZAGA is required to contribute to the costs of the response activity.

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.

### Regulatory impact assessments

The Ministry for Primary Industries produced regulatory impact assessments on 12 March 2018 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact assessments can be found at—

- <https://www.mpi.govt.nz/dmsdocument/32013>
- <https://www.mpi.govt.nz/dmsdocument/32010>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 14 March 2019.

This order is administered by the Ministry for Primary Industries.