



# Commodity Levies (Passionfruit) Order 2002

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 11th day of November 2002

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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## Order

### 1 Title

This order is the Commodity Levies (Passionfruit) Order 2002.

### 2 Commencement

This order comes into force on 18 December 2002.

### 3 Interpretation

In this order, unless the context otherwise requires,—

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

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

**FOB value** means the free on board value of any quantity of passionfruit set out in the declaration attached to, or forming part of, the customs entry made in respect of passionfruit exported from New Zealand

**grower** means a person whose business is or includes growing passionfruit for sale, processing, or export

**GST** means goods and services tax

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

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

**levy year**—

- (a) means a period of 12 months that begins on 1 January and ends on 31 December; and
- (b) includes the period beginning on the commencement of this order and ending on 31 December 2003

**mediator** means a person appointed under clause 22(2); and, in relation to a dispute, means a mediator appointed to resolve it

**NZPGA** means the body that, on the commencement of this order, is known as The N.Z. Passionfruit Growers Association Incorporated

**passionfruit** means the fruit of the purple passionfruit plant *Passiflora edulis*

**processed** includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, and preserved,—

- (a) whether as passionfruit or as concentrate, pulp, puree, sauce, or some other product; and
- (b) whether alone or with other ingredients.

#### **4 Levy imposed**

- (1) A levy is imposed on all passionfruit grown in New Zealand for sale, processing, or export.
- (2) The levy is payable to NZPGA.

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

The grower of passionfruit is primarily responsible for paying the levy on it.

#### **6 Collection agents to pay levy on passionfruit bought or sold and recover it from growers**

- (1) A collection agent who buys passionfruit from a grower (except through another collection agent), or who sells or exports passionfruit on a grower's behalf,—
  - (a) must pay the levy on the passionfruit; and
  - (b) may recover the levy (and any GST paid in respect of it) from the grower—
    - (i) by deducting the amount of the levy (and any GST payable on it) from the payment made to the grower; or
    - (ii) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.
- (2) Before paying the levy to NZPGA, a collection agent may deduct from the levy a collection fee of not more than 10% of the amount of levy (exclusive of GST) plus the GST payable on the fee.

#### **7 Basis of calculation of levy**

The levy is to be calculated,—

- (a) in the case of passionfruit sold by, or on behalf of, a grower, by reference to the price of the passionfruit at the first point of sale (excluding GST):

- (b) in the case of passionfruit grown and processed by the grower, by reference to the value of the unprocessed fruit (excluding GST) set by NZPGA at its annual general meeting in the previous levy year:
- (c) in the case of passionfruit exported by, or on behalf of, a grower, by reference to the FOB value of the passionfruit (excluding GST).

## **8 Maximum rate of levy**

- (1) The maximum rate of the levy is 2% of—
  - (a) the price of the passionfruit (excluding GST) at the first point of sale if the passionfruit is sold by, or on behalf of, the grower in New Zealand:
  - (b) the value of the unprocessed fruit (excluding GST) set by NZPGA if the passionfruit is grown and processed by the grower in New Zealand:
  - (c) the FOB value of the passionfruit (excluding GST) if the passionfruit is exported by, or on behalf of, a grower.
- (2) The rate specified in subclause (1) is the rate before the deduction of any costs or charges.

## **9 Payment of levy**

The levy must be paid at a single rate.

## **10 NZPGA must fix actual rate of levy**

NZPGA must fix the actual rate of levy,—

- (a) for the levy year ending on 31 December 2003, by any means by which it may lawfully make decisions:
- (b) for each subsequent levy year, at its annual general meeting held in the previous levy year or at a special general meeting called for the purpose.

## **11 Rate if no rate fixed before beginning of levy year**

If NZPGA does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 10.

**12 Notification of levy rate**

- (1) As soon as practicable after fixing the rate of levy for a levy year, the NZPGA must notify it in—
  - (a) *The Orchardist*; and
  - (b) the *Gazette*.
- (2) If *The Orchardist* ceases to be published, the rate of levy for a levy year must be notified in—
  - (a) any publication that replaces it; or
  - (b) if no publication replaces it, a publication specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*.

**13 When levy payable**

- (1) The due day for payment of the levy is the day on which the passionfruit is sold, processed, or exported, as the case may be.
- (2) Amounts of levy that become payable during any month must be paid to NZPGA no later than the 20th day of the next month.

**14 NZPGA must spend levy money**

NZPGA must spend or (pending expenditure) invest all levy money paid to it.

**15 NZPGA must consult on how levy money is spent**

- (1) NZPGA must, at least once every 12 months, consult growers as to how the levy money is spent.
- (2) NZPGA must use the following process to consult growers:
  - (a) it must notify growers, by way of a newsletter and *The Orchardist* or any other similar publication that is likely to be read by growers, that they are invited to attend a general meeting of NZPGA held to approve how the levy money is spent:
  - (b) it must circulate to all growers before the meeting a draft budget and a draft plan of how the levy money is proposed to be spent.
- (3) The draft budget and the draft plan must be approved at the general meeting by growers who are members of NZPGA.
- (4) For the purposes of subclause (3), a grower who is not a member of NZPGA may attend the meeting but only has

speaking rights on how the levy money is proposed to be spent.

## **16 Purposes for which levies may be spent**

- (1) NZPGA may spend levy money for the following purposes relating to passionfruit or growers:
  - (a) product development and promotion:
  - (b) scientific research:
  - (c) pest and disease control:
  - (d) grower education:
  - (e) research into grower-related issues and quality management:
  - (f) communication between growers and industry-related bodies:
  - (g) day-to-day administration of NZPGA.
- (2) NZPGA must not spend any levy money on commercial or trading activities.

## **17 Conscientious objectors**

- (1) A grower or collection agent who objects on conscientious or religious grounds to the manner of recovery by NZPGA of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to NZPGA.

## **18 Returns**

- (1) A payment of levy by a grower to NZPGA must be accompanied by a statement of the value of the passionfruit to which the payment relates.
- (2) A payment of levy by a collection agent to NZPGA must be accompanied by a statement of the amount of levy the agent has collected from growers.
- (3) Every grower and collection agent must supply to NZPGA, in writing and as soon as reasonably practicable, any information required by NZPGA for the purpose of calculating the levy.

## **19 Records**

- (1) Every grower must, in each levy year, keep records of—
  - (a) the quantity of passionfruit sold, processed, or exported by the grower; and

- (b) the name of the collection agent (if any) to whom the grower has sold passionfruit; and
  - (c) the price paid, or value placed, on the passionfruit sold, processed, or exported; and
  - (d) the amount of levy paid to NZPGA for each quantity of passionfruit.
- (2) Every collection agent must, in each levy year, keep records of—
- (a) the name and address of each grower from whom passionfruit was bought or on whose behalf passionfruit was sold or exported; and
  - (b) the quantity of passionfruit bought from each grower, or sold or exported on the grower's behalf; and
  - (c) the price paid, or the value placed, on each quantity of passionfruit bought from each grower, or sold or exported on the grower's behalf; and
  - (d) the amount of levy collected and paid to NZPGA for each quantity of passionfruit.
- (3) NZPGA must, in each levy year, keep records of—
- (a) each amount of levy money paid to it; and
  - (b) the name and address of each grower or collection agent who paid each amount of levy and the date on which it was received; and
  - (c) how levy money was spent or invested.
- (4) The records required by this clause must be retained for at least 7 years from the end of the levy year to which they relate.

## **20 Confidentiality of information**

- (1) No officer, employee of NZPGA, or any other person who gathers information may disclose (except to some other officer or employee of NZPGA) any information obtained—
- (a) under or because of this order; or
  - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent—
- (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
  - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
  - (c) the giving of evidence in any legal proceedings taken—

- (i) under or in relation to this order; or
  - (ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent NZPGA from—
  - (a) disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes; or
  - (b) disclosing or using any information for the purposes of invoicing and collecting the levy; or
  - (c) disclosing or using any information with the consent of every identifiable person to whom it relates.

## **21 Remuneration of persons conducting compliance audits**

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

### *Mediation in case of dispute*

## **22 Appointment of mediators**

- (1) This clause applies to any dispute about—
  - (a) whether or not any person is required to pay the levy; or
  - (b) the amount of levy payable.
- (2) Any party to the dispute may ask the President of the Institute of Chartered Accountants of New Zealand to appoint a person to resolve the dispute by mediation; and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) 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 29.

## **23 Remuneration of mediators**

- (1) A mediator must be paid the 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 Institute of Chartered Accountants of New Zealand (or a person authorised by the President to do so) 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 is to pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

#### **24 Time and place of conference**

Every conference organised by a mediator of the parties to a dispute is to be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

#### **25 Conference to be held in private**

Except as provided in clause 26, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

#### **26 Representatives**

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties organised by the mediator.

#### **27 Right to be heard**

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at the conference.

#### **28 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 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 of the parties to a dispute to verify the evidence by statutory declaration.

**29 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) If subclause (1) applies, the mediator 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 decision of the mediator.

**30 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 29 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 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 every other party to the dispute.
- (4) Every party 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.

**31 Revocation**

- (1) The Commodity Levies (Passionfruit) Order 1996 (SR 1996/381) is revoked.
- (2) Despite subclause (1), amounts of levy that become payable before the commencement of this order to NZPGA under the Commodity Levies (Passionfruit) Order 1996 continue to be due and payable as if that order had not been revoked.

Marie Shroff,  
Clerk of the Executive Council.

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### **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 December 2002, imposes a levy on commercially grown passionfruit that is payable to The N.Z. Passionfruit Growers Association Incorporated (NZPGA). Passionfruit growers are primarily responsible for paying the levy. However, if a grower sells passionfruit to a collection agent for resale or export, the collection agent must pay the levy and recover it from the grower.

This order revokes and replaces the Commodity Levies (Passionfruit) Order 1996. Section 13 of the Commodity Levies Act 1990 provides that a commodity levy, unless earlier revoked, expires 6 years after it is made.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 November 2002.

This order is administered in the Ministry of Agriculture and Forestry.

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