

Reprint
as at 12 December 2020



**Biosecurity (Readiness and Response—Citrus Fruit Levy)
Order 2019**
(LI 2019/324)

Patsy Reddy, Governor-General

Order in Council

At Wellington this 16th day of December 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 made after being satisfied of the matter described in section 100ZB(6) of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Biosecurity (Readiness and Response—Citrus Fruit Levy) Order 2019.

2 Commencement

This order comes into force on 1 April 2020.

Order: confirmed, on 12 December 2020, by section 8(g) of the Subordinate Legislation Confirmation Act 2020 (2020 No 66).

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) NZCGI

citrus fruit means the following fruit and their hybrids:

- (a) grapefruit:
- (b) lemons:
- (c) limes:
- (d) mandarins:
- (e) oranges:
- (f) tangelos

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

- (a) buying citrus fruit from growers to sell in New Zealand or overseas; or
- (b) selling citrus fruit in New Zealand or overseas on behalf of growers

deed—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZCGI on 16 March 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)

first point of sale, in relation to citrus fruit exported for sale, means the earlier of the following:

- (a) when the citrus fruit is loaded on an international carrier for export:
- (b) when the citrus fruit is sold to an overseas buyer

grower means a person whose business is, or includes, growing citrus fruit for commercial purposes in New Zealand

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

levy means the levy imposed by clause 4

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

levy rate means the levy rate set under clause 8 or the levy rate varied under clause 9

levy year means,—

- (a) for the first levy year, the period that begins on 1 April 2020 and ends on 31 March 2021; and

- (b) for each subsequent year (other than the last year), the period of 12 months that begins on 1 April and ends on 31 March

NZCGI means the industry organisation that, on the commencement of this order, was known as New Zealand Citrus Growers Incorporated

processing means doing any of the following to citrus fruit for commercial purposes:

- (a) artificially drying:
- (b) bottling:
- (c) canning:
- (d) evaporating:
- (e) freezing:
- (f) juicing:
- (g) preserving

quarter means the following periods:

- (a) 1 January to 31 March:
- (b) 1 April to 30 June:
- (c) 1 July to 30 September:
- (d) 1 October to 31 December

readiness activity has the meaning given in section 100Y(2) of the Act

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

4 Levy on citrus fruit

- (1) A levy is imposed on all citrus fruit grown in New Zealand by growers for commercial purposes, including for processing and export.
- (2) The levy must be paid to NZCGI.

5 How levy may be spent

- (1) NZCGI must spend all levy money paid to it to meet its commitments to readiness and response activities under the agreement.
- (2) NZCGI may invest levy money until it is spent.

Determining levy

6 Basis for calculating levy

The levy must be calculated on the basis of the weight in kilograms at the first point of sale (for domestic and export sales).

7 Levy must be paid at single rate

The levy must be paid at a single rate.

8 Maximum levy rate

- (1) The maximum rate of levy payable is 3 cents per kilogram of citrus fruit sold.
- (2) The maximum levy rate is exclusive of GST.

9 Rate of levy payable

- (1) The levy rate is 0.5 cents per kilogram of citrus fruit sold.
- (2) If NZCGI does not set the levy rate before the start of a levy year, the levy for that year is the rate most recently set under this clause.
- (3) This clause is subject to clause 10.

10 Power to vary levy rate for readiness and response activities

- (1) NZCGI may vary the levy rate, with the approval of NZCGI's board, to meet its readiness and response commitments.
- (2) When varying a levy rate under this clause, NZCGI must set—
 - (a) the varied rate at a level that is sufficient, but does not exceed what is necessary, to enable NZCGI to meet its readiness and response activity commitments under the agreement; and
 - (b) a starting date for the varied rate that is after the date on which NZCGI gives notice under clause 11.
- (3) The levy rate set in accordance with this clause may be set—
 - (a) at zero; and
 - (b) for any, or an undefined, period of time.

11 Notification

- (1) NZCGI must notify a levy rate and its starting date set under clause 9 or a varied rate and its starting date set under clause 10.
- (2) The earliest date that the rate or varied rate may come into effect is on the day after NZCGI has given notice of the new rate.
- (3) NZCGI must notify a rate or varied rate by publishing it—
 - (a) in the *Gazette*; and
 - (b) in the NZGCI's newsletter or a similar publication; and
 - (c) by email or post to all growers and collection agents known to NZCGI; and
 - (d) on NZCGI's website.
- (4) Notification under subclause (3)(c) is treated as occurring at the time the notice would have been delivered in the ordinary course of post or at the time of transmission of the email, whichever is earlier.

*Paying levy***12 Growers responsible for paying levy**

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

13 Collection agents responsible for collecting levy

- (1) A collection agent is responsible for collecting the levy and paying it to NZCGI.
- (2) A collection agent is not responsible for collecting the levy if—
 - (a) the grower and NZCGI have agreed in writing that the grower will pay the levy; and
 - (b) the grower has given the collection agent notice of that agreement by email or post.
- (3) No collection agent is exempt from paying the levy.
- (4) A collection agent may recover the levy from a grower—
 - (a) by deducting the amount of the levy from the payment made to the grower for the citrus fruit (including any GST payable); or
 - (b) by recovering the amount of the levy as a debt due from the grower (including any GST payable).
- (5) A collection agent must inform the grower of the amount of levy money deducted under this order.

14 When levy payable

- (1) The due date for payment of the levy by a grower or a collection agent is the date at the first point of sale.
- (2) The latest date for payment of the levy is as follows:
 - (a) for payment by a grower, the 20th day of the month after the last month of the quarter in which the due date falls:
 - (b) for payment by a collection agent, the 20th day of the month after the month in which the due date falls.

15 Penalty for late payment

If a grower or a collection agent does not pay an amount of levy money (or GST payable on that amount) by the latest date for payment, they must pay NZCGI a further 2% of the unpaid amount for each whole month that the amount (or part of the amount) remains unpaid after the latest date.

16 Collection fees

- (1) A collection agent may charge NZCGI—
 - (a) a fee of not more than 5% of the levy payable (exclusive of GST); and

- (b) the GST payable on that fee before the levy is paid to NZCGI.
- (2) A grower who pays the levy directly to NZCGI or the Director-General is not entitled to charge a fee.

17 Conscientious objectors

- (1) A grower or a 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 NZCGI.

Records that must be kept

18 Growers must keep records

- (1) A grower who pays levy money directly to NZCGI must keep records of the following for each levy year:
 - (a) the sales that the levy was deducted from; and
 - (b) the amount of the levy paid to NZCGI or to the Director-General.
- (2) A grower who pays levy money directly to a collection agent must keep records, for each levy year, of the name and contact details of the collection agent.
- (3) Each grower must—
 - (a) keep the records for 2 years after the levy year to which the records relate; and
 - (b) provide NZCGI with a copy of those records as soon as is reasonably practicable after receiving a written request from NZCGI.

19 Collection agents must keep records

- (1) A collection agent must keep records of the following for each levy year:
 - (a) the name and contact details of the grower; and
 - (b) the sales that the levy money was deducted from; and
 - (c) the rate at which the levy was collected; and
 - (d) the date on which the levy was collected or received; and
 - (e) the amount of levy collected and paid to NZCGI or to the Director-General; and
 - (f) the amount of the collection fee charged.
- (2) Each collection agent must—
 - (a) keep the records for 2 years after the levy year to which the records relate; and
 - (b) provide NZCGI with a copy of those records as soon as is reasonably practicable after receiving a written request from NZCGI.

20 NZCGI must keep records

- (1) NZCGI must keep records of the following for each levy year:
 - (a) how the levy money was spent or invested; and
 - (b) each amount of levy money it received; and
 - (c) the date on which it received the levy money; and
 - (d) the name of the collection agent who paid the levy money; and
 - (e) the name of the grower if the grower paid the levy money directly to NZCGI.
- (2) NZCGI must keep the records for 7 years after the levy year to which the records relate.

21 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 NZCGI 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 100ZG of the Act.
- (3) NZCGI 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 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.

22 Remunerating auditors

- (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 are payable by NZCGI at a rate agreed by the Minister and NZCGI.

Arbitration in case of dispute

23 Appointing arbitrators

- (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) 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 arbitrator'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 that the 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 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 1 April 2020, imposes a levy on citrus fruit. The grower is responsible for paying the levy. The levy must be collected by collection agents unless the grower pays the levy to the Director-General.

New Zealand Citrus Growers Incorporated (**NZCGI**) is the citrus fruit industry sector organisation under Part 5A of the Biosecurity Act 1993 (the **Act**). Part 5A concerns agreements between government and industry organisations to deal with unwanted organisms, including agreements for jointly funding the costs of readiness and response activities.

NZCGI must spend the levy money to meet its commitments in contributing to the costs of readiness and response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZCGI on 16 March 2016 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and NZCGI.

Clause 9 sets the levy rate for citrus fruit at 0.5 cents per kilogram sold. This rate may be varied under *clause 10* if NZCGI is required to contribute to a response activity.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2020, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 19 December 2019.

Reprints notes

1 *General*

This is a reprint of the Biosecurity (Readiness and Response—Citrus Fruit Levy) Order 2019 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Subordinate Legislation Confirmation Act 2020 (2020 No 66): section 8(g)