



Biosecurity (Readiness and Response—Process Vegetables Levy) Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 6th day of July 2020

Present:

The Right Hon Jacinda Ardern presiding 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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Order

1 Title

This order is the Biosecurity (Readiness and Response—Process Vegetables Levy) Order 2020.

2 Commencement

This order comes into force on 10 August 2020.

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) HortNZ

collection agent means a person whose business is or includes commercial processing

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

deed—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by HortNZ on 11 June 2018 (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)

grower means a person whose business is or includes the commercial production of process vegetables

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

HortNZ means Horticulture New Zealand Incorporated

levy—

- (a) means a levy imposed by clause 4; and
- (b) includes any additional levy imposed under clause 16

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

levy rate means the rate set under clause 9 or varied under clause 10

levy year means,—

- (a) for the first levy year, the period starting on 10 August 2020 and ending on 31 March 2021; and
- (b) for each subsequent year, the 12-month period that starts on 1 April and ends on 31 March

notional process value means the amount of money that, in the opinion of Process Vegetables NZ, the grower would have received if, immediately before the process vegetables were processed, the grower had sold the vegetables to a similar processor situated in the same locality as the grower

process vegetables means the following vegetables grown in New Zealand for commercial processing:

- (a) beans, beetroot, broccoli, Brussels sprouts, carrots, cauliflower, kumara, parsnips, peas, silverbeet, spinach, sweetcorn, and tomatoes; and
- (b) the hybrids of those vegetables

Process Vegetables NZ means the Processed Vegetables Product Group established by HortNZ

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 process vegetables

- (1) A levy is imposed on all process vegetables.
- (2) The levy must be paid to HortNZ.

5 How levy may be spent

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

Determining levy

6 Basis for calculating levy

- (1) The levy must be calculated on the basis of the price received at the first point of sale, except where the process vegetables are processed before the first point of sale, in which case the levy will be a percentage of the notional process value.
- (2) A price referred to in subclause (1) is exclusive of GST.

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 is 0.50% of—
 - (a) the price received for the process vegetables at the first point of sale; or
 - (b) where the process vegetables are processed before the first point of sale, the notional process value.
- (2) The maximum levy rate is exclusive of GST.

9 Levy rate payable

- (1) The levy rate is set at zero.
- (2) This clause is subject to clause 10.

10 Power to vary levy rate for readiness and response activities

- (1) HortNZ may vary the levy rate if HortNZ is required to contribute to the costs of a readiness or response activity—
 - (a) without consulting levy payers; and
 - (b) for a period not exceeding 3 years.
- (2) When varying a levy rate under this clause, HortNZ must set—

- (a) a varied rate that is sufficient, but does not exceed what is necessary, to enable HortNZ 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 HortNZ gives notice under clause 11.

Notification process

11 HortNZ must notify levy rate and varied levy rate

- (1) HortNZ must notify a rate set under clause 9 or varied under clause 10 and its starting date, as soon as practicable after setting the rate,—
 - (a) in the industry organisation magazine (*NZGrower*) or a similar publication; and
 - (b) by post or email to all growers and collection agents known to HortNZ; and
 - (c) on the Process Vegetables NZ website.
- (2) Notification under subclause (1)(b) is treated as occurring,—
 - (a) by post, at the time the notice would have been delivered in the ordinary course of post; and
 - (b) by email, at the time of transmission of the email.

Paying levy

12 Growers primarily responsible for paying levy

Growers are primarily responsible for paying the levy.

13 Collection agents must pay levy and may recover it from growers

- (1) Collection agents are responsible for collecting the levy and paying it to HortNZ.
- (2) A collection agent is not responsible for collecting the levy if—
 - (a) the grower and HortNZ 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 post or email.
- (3) A collection agent must, at the first point of sale, pay the levy to HortNZ (and any GST payable on it) if the collection agent—
 - (a) buys process vegetables from a grower; or
 - (b) sells or processes process vegetables on behalf of a grower.
- (4) A collection agent may recover the levy (and any GST payable on it) 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.
- (5) A collection agent must disclose to a grower the amount of levy money deducted under this order.
- (6) A collection agent who pays the levy to HortNZ 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.

14 When levy payable by growers

- (1) If a grower exports their own process vegetables, the due date for payment of the levy by the grower is 31 March.
- (2) Growers must pay the levy annually for the preceding 12 months.
- (3) The latest date by which the growers must pay the levy is 30 June in the same calendar year.
- (4) HortNZ may, at its absolute discretion, extend the time for a grower to pay an amount of levy money if HortNZ determines that the grower was or will be unable to pay the levy by the latest date for payment.

15 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 deducts the levy from the grower.
- (2) The latest date by which a collection agent must pay the levy is the 20th day of the month after the month in which the collection agent deducted the levy from the grower.
- (3) HortNZ may, at its absolute discretion, extend the time for a collection agent to pay an amount of levy money if HortNZ determines that the collection agent was or will be unable to pay the levy by the latest date for payment.

16 Additional levy for late payment

If a grower or a collection agent does not pay an amount of levy money (including GST, if applicable) by the latest date for payment, they must pay HortNZ—

- (a) an additional levy of 10% of the amount of the unpaid levy money; and
- (b) for each whole month that the amount (or part of the amount) remains unpaid after the latest date for payment, a further additional levy of 2% of the unpaid amount.

17 Conscientious objectors

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

- (2) The Director-General must pay the amount to HortNZ.

Returns

18 Collection agents must make returns to HortNZ

- (1) A collection agent must provide a completed return to HortNZ when paying the levy.
- (2) The return must be in a form approved by HortNZ.
- (3) The return must include, in relation to the levy being paid,—
 - (a) the name, trading name, and contact details of the grower; and
 - (b) the amount of levy paid to HortNZ; and
 - (c) the sales value, the price received or paid, or the notional process value of the process vegetables from which the levy was deducted.

Records

19 Growers and collection agents must keep records

- (1) A grower who pays a levy directly to HortNZ must keep records of the following for each levy year:
 - (a) the amount of levy money paid; and
 - (b) the sales that the levy money was deducted from.
- (2) A collection agent must keep records of the following for each levy year:
 - (a) the amount of levy money paid to HortNZ; and
 - (b) the amount of levy money received from growers; and
 - (c) the name, trading name, and contact details of each grower from whom the collection agent has collected levies; and
 - (d) the sales on which the levy money was paid.
- (3) HortNZ may, in writing, request from a grower or a collection agent any information that HortNZ reasonably requires to determine the amount of levy payable by the grower.
- (4) Each grower and each collection agent must provide HortNZ with a copy of those records within a reasonable time frame after receiving a written request.
- (5) Each grower and each collection agent must keep the records for 2 years after the levy year to which the records relate.

20 HortNZ must keep records

- (1) HortNZ must keep records of the following for each levy year:
 - (a) each amount of levy money it received; and
 - (b) the date on which it received the levy money; and
 - (c) the name of the collection agent who paid the levy money; and

- (d) the name of the grower if the grower paid the levy money directly to HortNZ; and
 - (e) how the levy money was spent or invested; and
 - (f) the date on which the levy money was spent or invested.
- (2) HortNZ must keep the records for 10 years after the date on which the levy money was received.

Compliance audit

21 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 must be paid by HortNZ at a rate agreed to by the Minister and HortNZ.

Arbitration process

22 Appointing arbitrators

- (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.

23 Application of Arbitration Act 1996 to dispute

- (1) Subject to clause 25, 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.

24 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.

25 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with an arbitrator's decision may appeal to the District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal within 28 days after the making of the decision concerned, or 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 comes into force on 10 August 2020. It imposes a levy on all process vegetables (including hybrids of those vegetables) grown in New Zealand for commercial processing. Growers are responsible for paying the levy. The levy must be collected by collection agents unless a grower pays the levy to the Director-General.

Horticulture New Zealand Incorporated (**HortNZ**) is the industry organisation that represents the process vegetables sector 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.

HortNZ 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 HortNZ on 11 June 2018 and

any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and HortNZ.

Clause 9 sets the levy rate for process vegetables at zero. This rate may be varied under *clause 10* if HortNZ is required to contribute to a readiness or 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 2021, 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*: 9 July 2020.

This order is administered by the Ministry for Primary Industries.