



Biosecurity (Response—Apples and Pears 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 (Response—Apples and Pears 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) NZAPI

apple means any fruit of any species of the genus *Malus*, and any variety of those species

deed means—

- (a) the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZAPI (under its former name, Pipfruit New Zealand Incorporated) on 3 December 2014 (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 the occupier of land—

- (a) that is used in any levy year for growing apples or pears; and
- (b) that has 2 or more planted hectares of apples or pears (or a combination of apples and pears) as at 1 August of the current calendar year

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 9

levy year means,—

- (a) for the first levy year, the period starting on 10 August 2020 and ending on 31 October 2020; and
- (b) for each subsequent year, the period of 12 months that starts on 1 November and ends on 31 October

nashi pear means any fruit of—

- (a) the species *Pyrus pyrifolia*; or
- (b) any plant that is a hybrid of that species and the species *Pyrus ussuriensis*

NZAPI means the industry organisation known on the commencement of this order as New Zealand Apples and Pears Incorporated

occupier means—

- (a) a person who has the right to occupy land under a tenancy granted for a term of 12 months or more; or
- (b) if paragraph (a) does not apply, the owner of the land

pear means any fruit of any species of the genus *Pyrus* (including nashi pears)

planted hectares has the meaning given in clause 6

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

4 Levy on apples and pears

- (1) A levy is imposed on apples and pears grown in New Zealand by growers for commercial purposes, including for domestic supply, processing, and export.

- (2) The levy must be paid to NZAPI.

5 How levy may be spent

- (1) NZAPI must spend all levy money paid to it on meeting its commitments relating to response activities under the agreement.
- (2) NZAPI 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 planted hectares.
- (2) In this order, **planted hectares** means the number of hectares of land a grower has planted in apples or pears to the nearest hectare, determined as at 1 August of the current calendar year.
- (3) In subclause (2), **nearest hectare** is determined as follows:
 - (a) any total area that includes a fraction of 0.5 or more hectares must be rounded up to the nearest hectare; and
 - (b) any total area that includes a fraction of less than 0.5 hectares must be rounded down to the nearest hectare.

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 for a levy year is \$100 per planted hectare.
- (2) The maximum levy rate is exclusive of GST.

9 Levy rate payable

- (1) NZAPI are responsible for setting the levy rate.
- (2) For the first levy year, the levy rate is \$50 per planted hectare.
- (3) For each subsequent levy year, NZAPI must—
 - (a) set the levy rate at an annual general meeting or at a special general meeting held for that purpose; and
 - (b) permit all growers to—
 - (i) attend the meeting; and
 - (ii) vote on the levy rate.
- (4) If NZAPI 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.

*Notification process***10 NZAPI must notify rate**

- (1) After setting the rate, NZAPI must notify the new rate and its starting date—
 - (a) in the industry organisation’s magazine (*Pipfruit Newz*) or a similar publication; and
 - (b) by post or email to all growers known to NZAPI; and
 - (c) on the NZAPI 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***11 Growers primarily responsible for paying levy**

Growers are primarily responsible for paying the levy.

12 Conscientious objectors

- (1) A grower 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 NZAPI.

13 NZAPI responsible for collecting levy

- (1) NZAPI is responsible for collecting the levy from growers.
- (2) NZAPI must not charge a fee for collecting the levy.

14 When levy payable by growers

- (1) The due date for payment of the levy is the date on which the grower receives an invoice for the levy money from NZAPI.
- (2) The last date for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.

15 Additional levy for late payment

- (1) If any amount of the levy (including GST payable on that amount, if applicable) 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 NZAPI, in addition to the amount otherwise payable.
- (2) A further 2% of the amount owing is payable at the end of each additional month in which the amount remains unpaid.

*Records***16 Growers must keep records**

- (1) A grower must, for each levy year, keep records of—
 - (a) the grower’s planted hectares; and
 - (b) the amount of levy money paid to NZAPI or to the Director-General and the date of payment.
- (2) Growers must keep the records for 7 years after the date on which they paid the levy.
- (3) A grower must provide NZAPI with information from the records as soon as is reasonably practicable after receiving a written request from NZAPI for the information.

17 NZAPI must keep records

- (1) NZAPI must, for each levy year, keep records of—
 - (a) each amount of levy money it receives; and
 - (b) the date on which each amount of levy money is received; and
 - (c) the name of the grower who paid the levy money; and
 - (d) the planted hectares for each grower who paid a levy; and
 - (e) how and when the levy money was spent or invested.
- (2) NZAPI must keep the records for 7 years after the date on which they received the levy.

*Compliance audit***18 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 are payable by NZAPI at a rate agreed to by the Minister and NZAPI.

*Arbitration process***19 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.

20 Application of Arbitration Act 1996 to dispute

- (1) Subject to clause 22, 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.

21 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.

22 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 the filing of 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 levy order comes into force on 10 August 2020. It imposes a levy on apples and pears grown in New Zealand by growers for commercial purposes, including for domestic supply, processing, and export. Growers are responsible for paying the levy. *Clause 9* sets the initial levy rate for apples and pears at \$50 per planted hectare.

New Zealand Apples and Pears Incorporated (**NZAPI**) is the industry organisation that represents the commercial apple and pears 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.

NZAPI must spend the levy money to meet its commitments in contributing to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZAPI (under its former name, Pipfruit New Zealand Incorporated) on 3 December 2014 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and NZAPI.

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.