



Biosecurity (Readiness and Response—Fresh 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—Fresh 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) VegetablesNZ

collection agent means a person whose business is or includes—

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

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 VegetablesNZ on 8 November 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)

free on-board value means the value of exported fresh vegetables (excluding GST) specified in the declaration attached to, or forming part of, the Customs entry for the fresh vegetables

fresh vegetables—

- (a) means the following vegetables grown in New Zealand for commercial purposes:
 - (i) artichokes (Globe and Jerusalem), Asian vegetables (including Chinese white cabbage (bok choy, buk choy, pak choy, pak choi, and baak choi), Peking cabbage (wong nga pak, wong nga baak, or wong bok), Chinese flat cabbage (rosette bok choy or taai goo choi), garland chrysanthemum (tung ho, tong ho, chong ho, or thong ho), flowering Chinese cabbage (choy sum or choi sum), Chinese broccoli (Chinese sprouting broccoli, Chinese kale, or gai lan), Chinese box thorn (gau gei choi), mustard cabbage (gai choi or kai choy), amaranth (Chinese spinach and en choy), and fuzzy melon), beans (excluding field-dried beans), beetroot, box thorn, broad beans (including sora mame), broccoflower, broccoli, broccolini, Brussels sprouts, burdock, cabbage, capsicums, carrots, cauliflower, celeriac, celery, chilli peppers, chokos, courgettes, cucumbers, edamame (green soy beans), eggplant (also known as aubergine), Florence fennel, garland chrysanthemum, garlic, gherkins, ginger, herbs (including basil, bay, borage, caraway, chervil, chives, coriander, dill, fennel, horseradish, lemon balm, marigold, marjoram, mint, nasturtium, oregano, parsley, rosemary, sage, savory, sorrel, tarragon, and thyme), Indian vegetables (including Indian marrow (lauki or white gourd), ribbed gourd (turia), bitter

melon (karela or fu quas), snake beans, Indian beans (papri, tindori, or Galora), curry leaves, taro leaves, cow peas (chori), and pigeon peas (toover)), kohlrabi, kumara, leeks, lettuces, marrows, melons (including water, green netted, honey dew, bitter, rock, white musk, and prince), okra, parsnips, peas (excluding field-dried peas), puha, pumpkin, purslane, radishes (including Chinese radish and daikon), rakkyo, rhubarb, salad leaves, salsify, scallopini, scorzonera, shallots, silverbeet, spinach (including water spinach), spring onions, sprouted beans and seeds, squash (excluding buttercup squash for export from New Zealand), swedes, sweet-corn (including baby corn), taro, turnips, ulluco, watercress, witloof (also known as chicory or endive), yakon, yams, and zucchinis; and

- (ii) the hybrids of those vegetables; but
- (b) excludes any vegetables listed in paragraph (a) that are grown for commercial processing

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

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

levy—

- (a) means the 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 levy year, the 12-month period that starts on 1 April and ends on 31 March

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

VegetablesNZ means Vegetables New Zealand Incorporated.

4 Levy on fresh vegetables

- (1) A levy is imposed on fresh vegetables.
- (2) The levy must be paid to VegetablesNZ.

5 How levy may be spent

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

*Determining levy***6 Basis for calculating levy**

The levy rate payable on fresh vegetables in a levy year must be calculated,—

- (a) for domestic sales, on the basis of the price received at the first point of sale:
- (b) for export sales, on the basis of the free on-board value of the fresh vegetables.

7 Levy must be paid at single rate

The levy must be paid at a single rate.

8 Maximum levy rate

- (1) The maximum levy rate is,—
 - (a) for domestic sales, 0.20% of the price received for the fresh vegetables at the first point of sale:
 - (b) for export sales, 0.20% of the free on-board value of the fresh vegetables.
- (2) The maximum levy rate is exclusive of GST.

9 Levy rate payable

- (1) VegetablesNZ is responsible for setting the levy rate.
- (2) The levy rate for the first levy year is 0.05%.
- (3) VegetablesNZ may set the levy rate for each subsequent levy year.
- (4) Before setting a levy rate, VegetablesNZ must—
 - (a) include setting the levy rate as an agenda item for discussion at its annual general meeting or at a special general meeting; and
 - (b) permit all growers (whether or not those growers are members of VegetablesNZ) to—
 - (i) attend the meeting; and
 - (ii) have speaking rights in respect of the proposed levy rate.
- (5) If VegetablesNZ 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.
- (6) This clause is subject to clause 10.

10 Power to vary levy rate for response activity

- (1) VegetablesNZ may vary the levy rate if VegetablesNZ is required to contribute to the costs of a response activity without holding an annual general meeting or a special general meeting.
- (2) The VegetablesNZ board must approve—
 - (a) the variation of the levy rate (the **varied rate**); and
 - (b) the period during which the varied rate will apply (the **variation period**).
- (3) The board may approve—
 - (a) the varied rate only if the board is satisfied, on reasonable grounds, that the varied rate is set at a level that is sufficient, but does not exceed what is necessary, to enable VegetablesNZ to meet its response activity commitments under the agreement; and
 - (b) the variation period only if it will end no more than 3 years after the varied rate takes effect under clause 11.

*Notification process***11 VegetablesNZ must notify levy rate and varied levy rate**

- (1) VegetablesNZ must notify—
 - (a) any rate set under clause 9; and
 - (b) any varied rate and variation period approved under clause 10.
- (2) The earliest date that the rate or varied rate may come into effect is on the day after VegetablesNZ has given notice of the new rate.
- (3) VegetablesNZ must notify a rate or varied rate by publishing it—
 - (a) in the *Gazette*; and
 - (b) in the industry organisation magazine (*NZGrower*) or in a similar publication; and
 - (c) by post or email to all growers and collection agents known to VegetablesNZ.
- (4) Notification under subclause (3)(c) 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 Grower responsible for paying levy**

- (1) The grower is responsible for paying the levy if the grower—
 - (a) sells fresh vegetables directly to the public; or

- (b) exports their own fresh vegetables.
- (2) The grower—
 - (a) must pay the levy (and any GST payable on it) directly to VegetablesNZ; and
 - (b) must not charge a collection fee.

13 Collection agents responsible for collecting levy

- (1) A collection agent must, at the first point of sale, collect the levy (and any GST payable on it) if the collection agent—
 - (a) buys fresh vegetables from a grower; or
 - (b) sells or exports fresh vegetables on behalf of a grower.
- (2) A collection agent must pay the levy (and the GST) it collects to VegetablesNZ.
- (3) A collection agent may collect the levy (and any GST payable on it) from a 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.
- (4) A collection agent who pays the levy to VegetablesNZ 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.
- (5) A collection agent must disclose to a grower the amount of levy money deducted under this order.

14 When levy payable by growers

- (1) If a grower makes direct sales of, or exports, their own fresh vegetables, the due date for payment of the levy is 30 June.
- (2) Growers must pay the levy annually for the preceding 12 months.
- (3) The latest date that growers must pay the levy is 30 September in the same calendar year.
- (4) VegetablesNZ, at its discretion, may extend the time for a grower to pay an amount of levy money if VegetablesNZ 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 that the collection agent deducts the levy from the grower.
- (2) The latest date that 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.

16 Additional levy for late payment

If a grower or a collection agent does not pay an amount of levy money (and any GST payable on it) by the latest date for payment, they must pay VegetablesNZ—

- (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, an additional levy of 2% of the unpaid amount.

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 in this order may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to VegetablesNZ.

*Returns***18 Growers and collection agents must make returns to VegetablesNZ**

- (1) Every levy payment must be accompanied by a completed return in a form approved by VegetablesNZ and made available to growers and collection agents.
- (2) The return must include—
 - (a) the value of, and the kinds of, fresh vegetables to which the payment relates; and
 - (b) for collection agents, the name and contact details of the grower.

*Records***19 Growers must keep records**

- (1) A grower who pays a levy directly to VegetablesNZ must, for each levy year and for each kind of vegetable, keep records of—
 - (a) the amount of levy money paid; and
 - (b) the sales on which the levy money was paid.
- (2) A grower whose levies are paid by collection agents must, for each levy year and for each kind of vegetable, keep records of—
 - (a) the amount of the levy paid to the collection agent; and
 - (b) the sales that the levy was deducted from; and
 - (c) the name and contact details of the collection agent.
- (3) Every grower must—
 - (a) keep the records for 7 years after the date the levy was paid; and

- (b) provide VegetablesNZ with information from the records as soon as is reasonably practicable after receiving a written request.

20 Collection agents must keep records

- (1) A collection agent must, for each levy year and for each kind of vegetable, keep records of—
 - (a) the name and contact details of each grower; and
 - (b) the sales on which the levy money was collected; and
 - (c) the rate at which the levy money was collected; and
 - (d) the date the levy money was collected; and
 - (e) the amount of levy collected and paid to VegetablesNZ or to the Director-General; and
 - (f) the amount of the collection fee deducted by the collection agent.
- (2) Each collection agent must—
 - (a) keep the records for 7 years after the date the levy was received; and
 - (b) provide VegetablesNZ with information from the records as soon as is reasonably practicable after receiving a written request.

21 VegetablesNZ must keep records

- (1) VegetablesNZ must, for each levy year and for each kind of vegetable, keep records of—
 - (a) each amount of levy paid to it in that year and, in relation to each amount,—
 - (i) the date on which the levy money was received; and
 - (ii) the name of the grower or collection agent who paid the levy money; and
 - (b) how the levy money was spent or invested (if at all).
- (2) VegetablesNZ must keep the records for 10 years after the levy year to which the records relate.

Compliance audit

22 Remunerating 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 VegetablesNZ at a rate agreed by the Minister and VegetablesNZ.

*Arbitration process***23 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.

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 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 the District Court against the decision.
- (2) The appeal must be brought by the filing of 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 levy order comes into force on 10 August 2020. It imposes a levy on all fresh vegetables grown in New Zealand by fresh vegetable growers for commercial purposes, excluding any vegetables that are grown for commercial processing. Growers are responsible for paying the levy.

Vegetables New Zealand Incorporated (**VegetablesNZ**) is the industry organisation that represents the commercial fresh vegetable 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.

VegetablesNZ 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 VegetablesNZ on 8 November 2016 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and VegetablesNZ.

Clause 9 sets the levy rate for fresh vegetables at 0.05% of the price received at the first point of sale or of the free on-board value of the fresh vegetables. This rate may be varied under *clause 10* if VegetablesNZ 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 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.