



# Biosecurity (Response—Plantation Forestry Levy) Order 2019

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 30th day of September 2019

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—Plantation Forestry Levy) Order 2019.

### 2 Commencement

This order comes into force on 1 November 2019.

### 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) NZFOA

**deed—**

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZFOA on 5 November 2015 (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)

**Forest Biosecurity Committee** means the joint NZFOA and NZFFA committee of that name (or any committee that replaces that committee)

**forest owner** means the owner of trees in a plantation forest, whether or not—

- (a) that owner owns the land on which the trees are planted; or
- (b) cutting rights to the trees have been granted to another person

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

**harvested wood product—**

- (a) means any material that is, or is derived from, trees harvested from a plantation forest; and
- (b) without limitation, includes logs, woodchips, bin wood, posts, hogged material, and forest waste; but
- (c) does not include Christmas trees, tree bark sold directly from the forest, non-commercial firewood, or a product from a native natural forest

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

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

**levy year** means,—

- (a) for the first levy year, the period starting on 1 November 2019 and ending on 31 December 2019; and
- (b) for each subsequent year, the period of 12 months that begins on 1 January and ends on 31 December

**nursery** means a business that is, or includes, the growing, and selling to forest owners, of plantation forestry seedlings

**NZFFA** means The New Zealand Farm Forestry Association Incorporated

**NZFOA** means The New Zealand Forest Owners Association Incorporated

**owner of a harvested wood product** means the person who owns the harvested wood product at the time a levy becomes payable

**plantation forest—**

- (a) means any forest (whether exotic or native) that has grown as a result of being planted; and
- (b) includes any regenerated planted forest

**plantation forestry seedling** means a seedling grown in New Zealand from any of the following species or sub-species:

- (a) radiata pine (*Pinus radiata*):
- (b) Douglas-fir (*Pseudotsuga menziesii*):
- (c) macrocarpa (*Cupressus macrocarpa*):
- (d) white cedar (*Cupressus lusitanica*):
- (e) redwood (*Sequoia sempervirens*):
- (f) shining gum (*Eucalyptus nitens*):
- (g) brown barrel (*Eucalyptus fastigata*):
- (h) mountain ash (*Eucalyptus regnans*):
- (i) Sydney blue gum (*Eucalyptus saligna*)

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

**seedling** means any plant that is derived from a seed, a cutting, or any other propagation.

#### **4 Levy imposed**

- (1) This order imposes a levy on—
  - (a) harvested wood product from plantation forests in New Zealand; and
  - (b) plantation forestry seedlings sold from a nursery in New Zealand.
- (2) The levy must be paid to NZFOA.

#### **5 When levy becomes payable**

- (1) The levy on harvested wood product (plus GST, if any) becomes payable on the earlier of the following:
  - (a) immediately before the product enters a mill or other processing plant:
  - (b) immediately after the product enters a port.
- (2) The levy on plantation forestry seedlings becomes payable at the time of sale from a nursery.

#### **6 How levy may be spent**

- (1) NZFOA must spend all levy money paid to it on meeting its commitments relating to response activities under the agreement.
- (2) NZFOA may invest levy money until it is spent.

#### *Determination of levy*

#### **7 Basis for calculating levy**

The levy must be calculated as follows:

- (a) for harvested wood product, on the basis of weight in tonnes:

- (b) for plantation forestry seedlings, per seedling sold.

## **8 Different rates of levy apply**

Different levy rates apply to—

- (a) harvested wood product; and
- (b) plantation forestry seedlings.

## **9 Maximum rate of levy**

The maximum rate of levy is—

- (a) 26 cents per tonne (plus GST, if any) for harvested wood product; and
- (b) 4 cents (plus GST, if any) per plantation forestry seedling.

## **10 Rate of levy payable**

- (1) The levy rate for the first levy year is,—
  - (a) 0.0 cents per tonne for harvested wood product; and
  - (b) 0.0 cents per plantation forestry seedling.
- (2) This clause is subject to clause 11.

## **11 Power to vary rate of levy**

- (1) NZFOA may vary the levy rates at any time with the approval of the Forest Biosecurity Committee if, under the agreement, NZFOA is required to contribute to the costs of a response activity.
- (2) When varying a levy rate under this clause, NZFOA must set—
  - (a) the varied rate at a level that is sufficient, but does not exceed what is necessary, to enable NZFOA to meet its response activity commitments under the agreement; and
  - (b) a start date for the varied rate that is more than 2 months after the latest date on which NZFOA gives notice under subclause (3).
- (3) NZFOA must notify a variation and its starting date—
  - (a) in the *Gazette*; and
  - (b) in the *New Zealand Forestry News Bulletin*, or any equivalent publication later published by NZFOA; and
  - (c) in the *New Zealand Forest Owners Association e-News*, or any equivalent publication later published by NZFOA; and
  - (d) in 1 or more metropolitan newspapers; and
  - (e) by email to all levy payers whose email addresses are known to NZFOA.
- (4) Notification under—

- (a) subclause (3)(b) 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:
  - (b) subclause (3)(c) and (e) is treated as occurring at the time of transmission of the email.
- (5) A levy rate varied in accordance with this clause may be set—
- (a) at zero; and
  - (b) for a period not exceeding 10 years after the start date.

*Paying levy*

**12 Forest owner primarily responsible for paying levy**

- (1) The forest owner is primarily responsible for paying the levy.
- (2) No forest owner is exempt from paying the levy.

**13 NZFOA responsible for collecting levy**

NZFOA is responsible for collecting the levy.

**14 Payment of levy for harvested wood product and recovery of levy paid**

- (1) The owner of a harvested wood product must pay the levy on the product (plus GST, if any) to NZFOA.
- (2) The owner of a harvested wood product may recover the amount of the levy (plus GST, if any) from the person who sold the product to the owner (the **seller**)—
  - (a) by deducting the amount of the levy (plus GST, if any) from the payment made to the seller; or
  - (b) by recovering the amount of the levy (plus GST, if any) as a debt due from the seller.
- (3) The seller, and any person who purchased the harvested wood product prior to the sale referred to in subclause (2), may recover the amount of the levy (plus GST, if any) from the previous owner (if any)—
  - (a) by deducting the amount of the levy (plus GST, if any) from the payment made to the previous owner; or
  - (b) by recovering the amount of the levy as a debt due from the previous owner.

**15 Payment of levy for plantation forestry seedling purchased and recovery of levy paid**

- (1) The nursery owner must pay the levy on a plantation forestry seedling purchased from the nursery to NZFOA.

- (2) The nursery owner may recover the amount of the levy (plus GST, if any) from the purchaser—
  - (a) by adding the amount of the levy (plus GST, if any) to the purchase price of the plantation forestry seedling; or
  - (b) by recovering the amount of the levy (plus GST, if any) as a debt due from the purchaser.
- (3) Any purchaser of a plantation forestry seedling may recover the amount of the levy (plus GST, if any) from a subsequent purchaser—
  - (a) by adding the amount of the levy (plus GST, if any) to the purchase price of the plantation forestry seedling; or
  - (b) by recovering the amount of the levy as a debt due from the subsequent purchaser.

#### **16 When levy payable by levy payers**

- (1) At the beginning of each month, NZFOA must issue and send to the owner of a harvested wood product an invoice for the levy payable on the product (plus GST, if any).
- (2) The due date for paying the levy (plus GST, if any) is the date on which the invoice is issued under subclause (1).
- (3) At the beginning of each month, NZFOA must issue and send to every nursery an invoice for the levy payable on plantation forestry seedlings (plus GST, if any).
- (4) The due date for payment of the levy on plantation forestry seedlings (plus GST, if any) is the date on which the invoice is issued under subclause (3).
- (5) The last date for payment of the levy on harvested wood product and plantation forestry seedlings (plus GST, if any) is the 20th day of the month after the month in which the invoice is issued.

#### **17 Additional levy for late payment**

- (1) If any amount of the levy, or GST payable on it, has not been paid to NZFOA by the close of the last day for payment, the person responsible for the payment is liable to pay 5% of the amount of the levy not paid at the end of the first month to NZFOA, in addition to the amount otherwise payable.
- (2) A further 2% of the amount owing (including any previous penalties) is payable at the end of each additional month in which the amount remains unpaid.

#### **18 No collection fee**

A person must not charge a fee for collecting the levy.

#### **19 NZFOA may require returns**

- (1) NZFOA may require in writing a port, or a mill or other processing plant to provide a return to NZFOA.

- (2) The return must include the following information:
  - (a) the name and contact details of each person from whom harvested wood product was received; and
  - (b) the weight in tonnes of harvested wood product received from each person; and
  - (c) the date or dates on which harvested wood product were received from the person.
- (3) Any person who receives a request from NZFOA under subclause (1) must, as soon as is reasonably practicable after receiving the request, supply NZFOA with a completed return.

### *Miscellaneous*

## **20 Records**

- (1) Every owner of a harvested wood product, other than a forest owner, must, in each levy year, keep records of—
  - (a) the name and contact details of the person from whom the harvested wood product was received; and
  - (b) the weight in tonnes of harvested wood product sold or supplied, per transaction; and
  - (c) each amount of levy money paid to NZFOA or the Director-General; and
  - (d) the date on which the levy money—
    - (i) was recovered from the forest owner; and
    - (ii) was paid to NZFOA or the Director-General.
- (2) Every nursery owner must, in each levy year, keep records of—
  - (a) the number of plantation forestry seedlings sold or supplied; and
  - (b) the name and contact details of the person to whom plantation forestry seedlings were sold or supplied; and
  - (c) each amount of levy money paid to NZFOA or the Director-General; and
  - (d) the date on which the levy money was paid.
- (3) Every forest owner must, in each levy year, keep records of—
  - (a) the weight in tonnes of harvested wood product sold or supplied—
    - (i) directly from plantation forests; and
    - (ii) to a port, or a mill or other processing plant; and
  - (b) the number of plantation forestry seedlings purchased and the date on which they were purchased from a nursery; and
  - (c) each amount of levy money paid to NZFOA or the Director-General; and
  - (d) the date on which the levy money was paid.



- (4) NZFOA must, in each levy year, keep records of—
  - (a) how the levy money was spent or invested; and
  - (b) each amount of levy money it receives; and
  - (c) the date on which each amount of levy money is received; and
  - (d) the name and contact details of each person who paid the levy money.
- (5) The records must be kept for at least 10 years after the end of the levy year to which the records relate.
- (6) A person who is required to keep records must provide NZFOA with information from the records as soon as is reasonably practicable after receiving a written request from NZFOA for the information.

## **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 of NZFOA, or a person engaged under an employment agreement or contract for service by NZFOA, 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) NZFOA 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) if every identifiable person to whom the information relates consents; or
  - (d) as required by law.

## **22 Conscientious objectors**

- (1) A levy payer 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 NZFOA.

## **23 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 referred to in subclause (1) are payable by NZFOA at a rate agreed to by the Minister and NZFOA.

*Arbitration in case of dispute*

**24 Appointment of arbitrator**

- (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.

**25 Application of Arbitration Act 1996 to dispute**

- (1) Subject to clause 27, 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.

**26 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.

**27 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 within 28 days after the making of the decision concerned, or within any longer time that 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 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 November 2019, imposes a levy on harvested wood product and plantation forestry seedlings sold from a nursery in New Zealand. The forest owner is primarily responsible for the levy payment. The levy must be collected by the New Zealand Forest Owners Association (NZFOA) unless the levy is paid directly to the Director-General.

NZFOA is the plantation forestry industry sector organisation under Part 5A of the Biosecurity Act 1993 (the Act). Part 5A of the Act concerns agreements between Government and industry organisations to deal with unwanted organisms, including agreements for jointly funding the costs of response activities.

NZFOA must spend the levy money paid to it on meeting its commitments for contributing to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by NZFOA on 5 November 2015 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and NZFOA.

*Clause 10* sets the levy rate in the first levy year at 0.0 cents per tonne for harvested wood product and 0.0 cents per seedling sold for plantation forestry seedlings sold from a nursery. That rate may be varied under *clause 11* if, for example, a response activity is needed for an unwanted organism and NZFOA is required to contribute to the costs of the 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*: 3 October 2019.

This order is administered by the Ministry for Primary Industries.