

In Confidence

Office of the Minister of Agriculture  
Chair, Cabinet Legislation Committee

## Commodity Levies (Blackcurrants) Order 2019

### Proposal

1. This paper recommends that the Cabinet Legislation Committee (the Committee) authorise the submission of the Commodity Levies (Blackcurrants) Order 2019 (the order) to the Executive Council. This order would replace the Commodity Levies (Blackcurrants) Order 2013, which is due to expire on 22 September 2019.
2. Commodity levy orders made under the Commodity Levies Act 1990 (the Act) are submitted directly to the Committee without receiving prior Cabinet policy approval. This is because the Act specifies all of the policy criteria that need to be met for the making of an order.

### Background

#### *The Commodity Levies Act 1990*

3. The Act enables primary industries to collectively fund non-commercial, 'industry-good' activities such as research and development through their national representative bodies. The Act provides for the responsible Minister to impose a mandatory levy on a commodity at the request of an industry organisation, provided that there is majority support from potential levy payers in that industry. Commercial growers are primarily responsible for paying the levy.
4. Commodity levy orders, the instruments responsible for imposing a levy, are initiated and developed by industry organisations and last a maximum of six years. Levy orders set the maximum levy rates payable and specify the purposes for which levy funds may be spent. Industry organisations determine how the levies are spent and at what rate they are collected through annual consultation with levy payers.
5. Key requirements of the Act include:
  - a. Section 5(2)(aa) - that a support referendum for the proposed levy was held, in which over half of those who participated in the referendum supported the proposed levy;
  - b. Section 5(2)(ab) - that the referendum was competently devised;
  - c. Section 5(2)(ad) - that the referendum was adequately publicised, including meaningful consultation with potential levy payers to ensure that they were aware of the referendum's implications and were able to participate; and

- d. Section 5(2)(i) - that the uses of the levy funds relate closely to the interests of potential levy payers.
6. The Ministry for Primary Industries (MPI) currently administers 32 commodity levy orders that together collect around \$130 million per year. Industries included span the agriculture, horticulture, viticulture, fisheries and forestry sectors.

#### *The New Zealand Blackcurrant Industry*

7. The New Zealand blackcurrant industry is one of the smallest of the berryfruit industries, and comprises 21 commercial growers largely based in Nelson and Canterbury.
8. The majority of blackcurrants are exported as frozen juice concentrate, which has traditionally been used as an ingredient in drinks such as Ribena. In 2017, Ribena ceased purchasing New Zealand blackcurrant concentrate, leading to a number of growers exiting the industry.
9. Blackcurrant exports have fallen by 46 percent since 2016, from \$12.7 million to \$6.9 million in 2018. This has largely been driven by a decrease in exports of blackcurrant concentrate to Malaysia (where Ribena is produced), which fell from \$6.66 million in 2017 to \$1.89 million in 2018.
10. The industry's focus now is the global nutraceutical market, as well as growing traditional key markets such as Japan, Australia and China.

#### **Policy**

##### *The Proposed Order*

11. On 30 April 2019, I received an application from Blackcurrants NZ Incorporated (Blackcurrants NZ) for a new commodity levy order on blackcurrants under the Commodity Levies Act 1990 (the Act). This order will replace the Commodity Levies (Blackcurrants) Order 2013, which expires on 22 September 2019.
12. The proposed levy will be imposed on all blackcurrants grown in New Zealand for commercial purposes. The levy will be payable to Blackcurrants NZ, who will spend levy funds on behalf of levy payers and in accordance with the proposed levy order.
13. The proposed order is similar to the current order, with some minor changes:
- Biosecurity readiness has been included as a purpose for which the levy may be spent; and
  - Payments made after the latest date of payment will now incur a 5 percent penalty, with an additional 2 percent penalty each month the levy amount remains unpaid thereafter.

14. The maximum levy rate will remain at 6 cents/kg of blackcurrants produced, while the initial levy rate for the 2019/2020 levy year will remain at 4 cents/kg. Blackcurrants NZ expects to collect approximately \$140,000 in levy revenue over the 2019/2020 levy year.
15. For every year subsequent to the initial levy year, the levy rate will be set at Blackcurrants NZ's Annual General Meeting or Special General Meeting, to be held prior to the commencement of the levy year (year ended 30 September).

#### *Use of levy funds*

16. Levy monies collected under the proposed order will be used to fund a number of non-commercial, industry-good activities relating to the blackcurrant industry. These include:
  - new variety breeding;
  - scientific research and development;
  - market research and development;
  - promotion of New Zealand blackcurrants;
  - quality assurance;
  - technology transfer to growers;
  - biosecurity readiness; and
  - day-to-day administration of Blackcurrants NZ
17. Blackcurrants NZ will consult with levy payers on its proposed levy expenditure prior to the start of each levy year.

#### *Cost and benefits of the levy*

18. The proposed levy will allow Blackcurrants NZ to continue to deliver its industry-good activities, outlined in paragraph 16 above.
19. I consider that the proposed order will provide benefits that significantly outweigh the costs imposed by the levy. This sentiment is endorsed by strong support from those who voted in the levy referendum, the majority of whom believe there will be a net benefit from the continuation of a compulsory levy.
20. The activities undertaken by Blackcurrants NZ are industry-good in nature. It is therefore difficult to restrict the benefits of these activities to strictly those paying the levy. There is therefore a clear free-rider problem if these activities were to be funded by a voluntary levy. I consider that the activities undertaken by Blackcurrants NZ would not be possible or would be underprovided if the levy were to be collected on a voluntary basis.

## Compliance with the requirements of the Act

21. Section 5(2) of the Act requires proposed levy orders to be supported by the majority of potential levy payers, in terms of both number of voters and on a weighted basis. In the referendum held by Blackcurrants NZ through November-December 2018, all 15 growers who voted supported the proposed levy.

**Table 1: Results of Blackcurrants NZ's levy referendum**

Vote	Number of growers		Production volume	
	Number	Percentage	Volume (kg)	Percentage
Yes	15	100%	3,917,284	100%
No	0	0%	0	0%
Total	15	100%	3,917,284	100%

22. Blackcurrants NZ's referendum had a participation rate of 71 percent (representing 95 percent of production volume). This is significantly higher than the average participation rate for all commodity levy referenda over the past six years, which is around 40 percent.
23. MPI has examined the structure of the ballot material and results from the independent returning officer, and has advised me that the support referendum was competently devised, sufficiently publicised and distributed, and that all potential levy payers had been given a reasonable opportunity to vote.
24. I am satisfied that the application meets all the requirements of the Act. I therefore recommend that the Committee authorise the submission of this order to the Executive Council.

## Timing and 28-day rule

25. The order is to come into force on 3 October 2019, following 28 days of Gazette notification.

## Compliance

26. The order complies with the following:
- the principles of the Treaty of Waitangi;
  - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993; and
  - the principles and guidelines set out in the Privacy Act 1993.

## Regulations Review Committee

27. I consider that there are no grounds under Standing Order 319 for the Order to be brought to the special attention of the House of Representatives.

## **Certification by Parliamentary Counsel**

28. The order has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

## **Impact Analysis**

29. The Regulatory Quality Team at the Treasury has determined the regulatory decisions sought in this paper to be exempt from the requirement to provide a Regulatory Impact Assessment, due to the minor impact of the proposed levy on individuals, businesses and not-for-profit entities.

## **Publicity**

30. MPI will notify Blackcurrants NZ when the order is made, who will then publicise the making of the order to its levy payers.

## **Proactive Release**

31. Following Cabinet consideration, I intend to proactively release this paper in full within 30 business days.

## **Consultation**

32. The Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Treasury, and Te Puni Kōkiri were consulted on this paper and their feedback has been incorporated. The Department of the Prime Minister and Cabinet was also informed. Blackcurrants NZ was consulted during the drafting of the order.

## Recommendations

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The Minister of Agriculture recommends that the Committee:

1. **Note** that Blackcurrants NZ Incorporated has applied for a new levy order on blackcurrants under the Commodity Levies Act 1990, to replace the Commodity Levies (Blackcurrants) Order 2013, which expires on 22 September 2019;
2. **Note** that I have determined that the application complies with the requirements of the Commodity Levies Act 1990;
3. **Note** that this order will come into force on 30 September 2019; and
4. **Authorise** the submission of the Commodity Levies (Blackcurrants) Order 2019 to the Executive Council.

Authorised for Lodgement

Hon Damien O'Connor  
**Minister of Agriculture**