



Commodity Levies (Arable Crops) Order 2006

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 31st day of July 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Arable Crops) Order 2006.

2 Commencement

This order comes into force on 1 September 2006.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

arable crops—

- (a) means the following crops harvested by a combine harvester:
 - (i) small grain cereal, legume, and pulse grain crops:
 - (ii) large grain cereals:
 - (iii) herbage seed crops:
 - (iv) oilseeds:
 - (v) crops grown for seed multiplication for use in New Zealand or overseas:
 - (vi) hybrid and open pollinated vegetable and flower seeds; but
- (b) excludes maize

collection agent—

- (a) means a person whose business is or includes buying arable crops from a grower for resale; and
- (b) includes—
 - (i) a person who buys arable crops grown under contract:
 - (ii) a person who buys arable crops for the purpose of resale as a constituent part of a compound

FAR means Foundation for Arable Research Incorporated

grower means a person who grows arable crops

levy means the levy imposed by clause 4

levy year means,—

- (a) for the first year, the period—
 - (i) starting on the date on which this order comes into force; and
 - (ii) ending on 30 November 2007; and
- (b) for each later levy year, the period starting on 1 December and ending on 30 November

mediator means—

- (a) a person appointed under clause 23(2); and
- (b) for a particular dispute, a mediator appointed to resolve the dispute

selling price means the following prices exclusive of goods and services tax and before the deduction of any costs and charges:

- (a) in relation to arable crops grown for seed multiplication, the price that the arable crop would have attracted

- in field-dressed form in the locality in which the crop is grown:
- (b) in relation to arable crops that are processed before the first point of sale or used in feed lotting or intensive livestock farming or other similar activity within the grower's farming operation, the price that the crop would have attracted in field-dressed form in the locality in which the arable crop is grown:
 - (c) in relation to any other arable crops, the selling price of the arable crop at the first point of sale.

Levy imposed

4 Levy imposed

- (1) A levy is imposed on arable crops.
- (2) The levy is payable to FAR.

5 Growers primarily responsible for paying levy

- (1) Growers of arable crops are primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

6 Responsibility of collection agents for payment of levy

- (1) A collection agent must pay the levy and any goods and services tax payable on it if the collection agent buys arable crops from a grower.
- (2) The collection agent may recover the levy and any goods and services tax payable on it from the grower by—
 - (a) deducting the amount from the collection agent's payment to the grower; or
 - (b) recovering the amount as a debt due to the collection agent from the grower.

7 Collection fee

A collection agent who pays the levy may charge a collection fee of not more than 5% of the amount of levy collected (exclusive of goods and services tax) plus the goods and services tax payable on the fee by deducting the amount before paying the levy to FAR.

Determination of levy

- 8 Levy may be set at different rates**
The levy may be set at different rates for different classes of arable crop.
- 9 Levy calculation**
The levy payable in a levy year is to be calculated on the basis of the selling price of the arable crop.
- 10 Maximum levy rate**
The maximum rate of the levy is 1.5% of the selling price.
- 11 Fixing of levy rate**
- (1) For the levy year ending on 30 November 2007, FAR must fix the levy rate in accordance with its decision-making rules.
 - (2) For each later levy year, FAR must determine the actual levy rate before the beginning of the levy year in accordance with its decision-making rules.
- 12 Previous rate to apply**
If FAR has not set the actual levy rate before the beginning of the levy year, the levy payable for that year is the levy rate most recently fixed by FAR under clause 11.
- 13 Information to be supplied to FAR**
Every grower of arable crops and collection agent must supply to FAR any information that FAR requests in writing for the purpose of calculating the levy.
- 14 Notification of levy rate**
As soon as practicable after fixing a levy rate for a levy year, FAR must notify the levy rate and the year to which it applies—
- (a) in its newsletter to growers and collection agents; and
 - (b) by notice in the *Gazette*; and
 - (c) in 1 or more rural publications with a wide circulation in arable crop growing areas.

*When levy payable***15 When levy payable**

- (1) Levies must be paid monthly.
- (2) The due date for payment of an amount of levy on any quantity of arable crop is,—
 - (a) if the arable crop (including arable crop processed by the grower) is sold, the date on which payment for that quantity becomes due to its grower or is made to the grower (whichever is earlier); or
 - (b) if the arable crop is not sold, the date on which the crop was assigned for use within the grower's farming operation.
- (3) The latest date for payment of the levy is the 21st day of the month following the due date for payment.

*Expenditure of levy money by FAR***16 Levies to be spent by FAR**

FAR must spend or (pending expenditure) invest all levies paid to it.

17 General purposes for which levies may be spent

- (1) FAR may spend levies for all or any of the following purposes:
 - (a) arable crops research and development;
 - (b) education and training in relation to arable crops;
 - (c) day-to-day administration of FAR's activities.
- (2) FAR must not spend any levies on commercial or trading activities.

18 Consultation on spending levy money

- (1) FAR must consult growers who pay the levy on how it proposes to spend the levy money.
- (2) FAR may use any of the following methods to consult growers:
 - (a) discussions with local arable research groups and grower research committees;
 - (b) annual meetings, seminars, and field days.

*Record-keeping requirements and confidentiality
of information provided to FAR*

19 Records

- (1) Every grower must, in every levy year, keep records of the following matters and retain those records for at least 2 years after the end of that levy year:
 - (a) each quantity of arable crop sold by the grower; and
 - (b) the price paid for each quantity of arable crop; and
 - (c) the name and address of the buyer of each quantity of arable crop.
- (2) Every grower who assigns any quantity of arable crop for use within the grower's farming operation or processes the arable crop before sale must, in every levy year, keep records of the following matters and retain those records for at least 2 years after the end of that levy year:
 - (a) the quantity of arable crop assigned for use or processed (as the case may be); and
 - (b) in the case of arable crop assigned for use within the grower's farming operation, the purpose that the quantity of arable crop was assigned for.
- (3) FAR must, in every levy year, keep records of the following matters and retain those records for at least 2 years after the end of that levy year:
 - (a) the amount of every levy paid to it; and
 - (b) the date on which the levy was received; and
 - (c) the person who paid the levy; and
 - (d) how (if at all) amounts of levy were invested; and
 - (e) how and when amounts of levy were spent.
- (4) Every collection agent who forwards levies to FAR must, in every levy year, keep records of the following matters and retain those records for at least 2 years after the end of that levy year:
 - (a) each quantity of arable crop sold by a grower to the collection agent; and
 - (b) the price paid for each quantity of arable crop; and
 - (c) the name and address of the grower.

20 Confidentiality of information

- (1) No officer or employee of FAR may disclose (except to some other officer or employee of FAR) any commercially sensitive information obtained—
 - (a) under this order; or
 - (b) in relation to this order, under the Commodity Levies Act 1990.
- (2) Subclause (1) does not affect or prevent—
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent FAR from disclosing any information (not being information relating to an identifiable individual) or from using any information for the purpose of determining the voting entitlements, and counting the votes, of members of FAR.
- (4) Subclause (1) does not prevent FAR from—
 - (a) disclosing any information (not being information relating to an identifiable individual) for statistical or research purposes; or
 - (b) disclosing or using information for the purpose of collecting levies; or
 - (c) disclosing or using any information with the consent of every identifiable individual to whom it relates.

*Miscellaneous***21 Conscientious objectors**

- (1) Any grower who objects on conscientious or religious grounds to the manner of recovery of levies by FAR may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to FAR.

22 Remuneration of persons conducting compliance audit

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by FAR at a

rate determined by the Minister of Agriculture after consultation with FAR.

Mediation of disputes

23 Appointment of mediators

- (1) This clause applies to any dispute concerning—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation; and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 30.

24 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party is to pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

25 Time and place of conference

Every conference organised by a mediator of the parties to a dispute is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

26 Conference to be held in private

Except as provided in clause 27, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

27 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties organised by the mediator.

28 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties to the dispute organised by a mediator, may be heard at the conference.

29 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

30 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator must give each of the parties written notice of the mediator's decision and the reasons for that decision.

31 Appeal to District Court

- (1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 30 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time 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 every other party to the dispute.
- (4) Every party 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.

32 Revocation

- (1) The Commodity Levies (Arable Crops) Order 2000 (SR 2000/133) is revoked.
- (2) Despite subclause (1), amounts of levy that became payable before 23 July 2006 to FAR under the Commodity Levies (Arable Crops) Order 2000 continue to be due and payable as if that order had not been revoked.

Diane Morcom,
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 September 2006, imposes a levy on all arable crops (except maize, which is levied under a separate order) grown in New Zealand for sale or to be used within the grower's farming operation. It revokes and replaces the Commodity Levies (Arable Crops) Order 2000, which expired on 23 July 2006.

The levy is payable to the Foundation for Arable Research Incorporated.

Unless earlier revoked, the order expires 6 years after it is made by virtue of section 13 of the Commodity Levies Act 1990.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 3 August 2006.

This order is administered by the Ministry of Agriculture and Forestry.
