



COMMODITY LEVIES (WHEAT GRAIN) ORDER 1997

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 15th day of September 1997

Present:

THE HON JENNY SHIPLEY PRESIDING IN COUNCIL

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

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ORDER

1. Title and commencement—(1) This order may be cited as the Commodity Levies (Wheat Grain) Order 1997.

(2) This order generally comes into force on 1 January 1998.

(3) Clause 11 comes into force on the 28th day after the date of notification of this order in the *Gazette*.

2. Interpretation—In this order, unless the context otherwise requires,—

“Grower” means a person whose business is or includes the growing of wheat grain for sale or processing:

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

“Levy” means the levy imposed by clause 3:

“Levy money” means money paid or payable under this order as levy:

“Levy year”, or “year” means, subject to clause 11 (3), the 12-month period from 1 February in any year to 31 January in the following year (both dates inclusive):

“Mediator” means a person appointed under clause 24 (1); and, in relation to a dispute, means a mediator appointed to resolve it:

“Month” means a calendar month:

“Organisation” means the industry organisation referred to in clause 3 (3):

“Wheat grain product” means wheat grain that is processed into a value-added processed product:

“Wholesale purchaser” means a person whose business is or includes the buying of wheat grain or wheat grain product from its grower for resale or processing for resale (otherwise than as part of a meal provided by the person).

3. Levy imposed—(1) There is imposed on the commodity specified in subclause (2) a levy payable to the industry organisation specified in subclause (3).

(2) The commodity on which the levy is imposed is wheat grain grown in New Zealand for sale or processing.

(3) The industry organisation to which the levy is payable is the body known on the commencement of this order as United Wheat Growers NZ Limited.

4. Purpose for which levy money to be spent—The sole purposes for which the organisation may spend levy money are as follows:

(a) The purchase of disaster relief insurance for growers that has the attributes of flat rate cover, no excess, and no minimum loss:

(b) The administration costs of such insurance.

5. Basis of calculation of levy—The levy is to be calculated—

- (a) On the basis of the tonnage of wheat grain sold by the grower; or
- (b) Where a grower processes wheat grain into a value-added processed product before selling the wheat grain, on the basis of the tonnage of wheat grain before processing.

6. Growers primarily responsible for paying levy—The grower of wheat grain is primarily responsible for paying the levy on that grain.

7. Wholesale purchasers to pay levy on purchased wheat grain but may recover it from grower—A wholesale purchaser who in New Zealand buys wheat grain or wheat grain product from its grower—

- (a) Must pay the levy on that wheat grain; but
- (b) May recover the levy (and any GST paid in respect of it) from the grower by reducing the amount otherwise payable to the grower for the wheat grain or wheat grain product or any other wheat grain or wheat grain product bought from the grower.

8. Growers to pay levy in other cases—The grower of wheat grain who sells that wheat grain or wheat grain product derived from that wheat grain to any person other than a wholesale purchaser of the grain in New Zealand must pay the levy on that wheat grain.

9. Levy to be paid at single rate—The levy is to be paid at a single rate.

10. Maximum rate of levy—The maximum rate of the levy is \$3.50 per tonne of wheat grain (exclusive of GST).

11. Organisation to fix actual rate of levy—(1) The actual rate of the levy for any levy year is to be fixed by the organisation at least 1 month before the start of that year by any means by which it may lawfully make decisions.

(2) If no rate of levy has been fixed by the organisation for any levy year, the levy for that year will be payable at the rate last fixed under subclause (1).

(3) In this order, the period from 1 January 1998 to 31 January 1998 (both dates inclusive) is to be treated as if it were a levy year.

(4) The organisation may fix a nil levy rate.

12. Notification of rate of levy—As soon as is practicable after fixing a rate of levy for any levy year, the organisation must publish the rate and year—

- (a) By notice in the *Gazette*; and
- (b) By notification in the newsletter of the organisation, or any other newsletter likely to have circulation among growers; and
- (c) By notice in writing to all wholesale purchasers who the organisation reasonably believes are likely to be affected by the new levy.

13. Levy payments to be made on monthly basis by wholesale purchasers—The due date for the payment by a wholesale purchaser of amounts of levy under clause 7 is the day on which the purchaser is liable

to pay the grower for the wheat grain, or wheat grain product, and the latest day for payment is the 20th day of the following month.

14. Levy payments by growers—The due date for the payment by a grower of amounts of levy under clause 8 is the day on which the grower is paid for the wheat grain or wheat grain product sold by the grower, and the latest date for payment is the 20th day of the second month following that in which the grower is paid for the wheat grain or wheat grain product.

15. Returns by growers and wholesale purchasers—(1) Every grower who sells wheat grain product derived from wheat grain grown by the grower to a wholesale purchaser in New Zealand must at the time of sale or delivery supply the wholesale purchaser with a statement of the tonnage of wheat grain from which that wheat grain product was derived.

(2) Every payment of levy money to the organisation by a wholesale purchaser must be accompanied by a statement of—

- (a) The tonnage of wheat grain to which the payment relates; and
- (b) The region of production of the wheat grain.

(3) Every payment of levy money to the organisation by a grower must be accompanied by a statement of the tonnage of wheat grain to which the payment relates.

Miscellaneous Matters

16. Organisation to spend levy money—(1) Subject to subclause (2), the organisation must spend or (pending its expenditure) invest all levy money paid to it.

(2) No amount of levy money may be spent to purchase or otherwise effect any disaster relief insurance for wheat growers if that insurance does not have all 3 of the following attributes:

- (a) Flat rate cover:
- (b) No excess:
- (c) No minimum loss.

17. Records to be retained by wholesale purchasers—(1) Every wholesale purchaser of wheat grain or wheat grain product in New Zealand must—

(a) Record for each month the following matters in respect of each grower from whom they have purchased wheat grain or wheat grain product:

(i) The total tonnage of wheat grain purchased from the grower in that month:

(ii) The total tonnage of wheat grain product purchased from the grower in that month, and the total tonnage of wheat grain from which that wheat grain product was derived:

(iii) The amount of levy money paid to the organisation in that month:

(iv) The collection fee deducted by the wholesale purchaser from each payment of levy money to the organisation on the grower's behalf; and

(b) Ensure that the records are retained for at least 2 years after the end of the year in which the relevant month fell.

(2) Nothing in this clause requires any person to keep a nil record.

18. Records to be retained by growers—(1) Every grower must—

- (a) Record for each month the following matters in respect of wheat grain or wheat grain product sold by the grower to each wholesale purchaser in New Zealand:
 - (i) The total tonnage of wheat grain sold to the wholesale purchaser in that month;
 - (ii) The total tonnage of wheat grain product sold to the wholesale purchaser in that month, and the total tonnage of wheat grain from which that wheat grain product was derived;
 - (iii) The amount of levy money (if any) deducted by the wholesale purchaser from payments made to the grower in that month; and
 - (b) Record for each month the following matters in respect of wheat grain or wheat grain product sold by the grower to persons who are not wholesale purchasers in New Zealand:
 - (i) The total tonnage of wheat grain sold by the grower to such persons in that month;
 - (ii) The total tonnage of wheat grain product sold to such persons in that month, and the total tonnage of wheat grain from which that wheat grain product was derived;
 - (iii) The amount of levy money (if any) paid directly by the grower to the organisation in that month; and
 - (c) Ensure that the records are retained for at least 2 years after the end of the year in which the relevant month fell.
- (2) Nothing in this clause requires any person to keep a nil record.

19. Records to be retained by organisation—The organisation must—

- (a) Record the following matters in respect of each amount of levy money paid to it:
 - (i) The day on which the levy money was received;
 - (ii) The person who paid it;
 - (iii) The information contained in the statement accompanying the payment of levy money; and
- (b) Record how and when all levy money spent by it in each year was spent; and
- (c) Ensure that the records are retained for at least 2 years after the end of the year to which they relate.

20. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the manner of recovery by the organisation of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture. The chief executive will cause that amount to be paid to the organisation.

21. Collection fee may be charged by wholesale purchaser —(1) A wholesale purchaser who is required by clause 7 to pay levy money on any wheat grain or wheat grain product may charge the organisation a fee of 5% of the amount (exclusive of GST) of that levy money.

(2) The fee may be deducted by the wholesale purchaser from the amount of levy money otherwise payable to the organisation.

(3) The fee of 5% is exclusive of any GST payable in respect of the fee.

22. Confidentiality of information—(1) No officer or employee of the organisation, no returning officer appointed by the organisation, and no person or body engaged in the election of members or officeholders of the organisation may disclose (otherwise than to some other such person) any commercially sensitive information obtained, or obtained as a result of actions taken,—

- (a) Under this order; or
 - (b) In relation to this order, under the Commodity Levies Act 1990.
- (2) Nothing in subclause (1) affects or prevents—
- (a) The production of records or accounts under section 17 (1) of the Commodity Levies Act 1990; or
 - (b) The production of any statement under section 25 of the Commodity Levies Act 1990; or
 - (c) 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) Nothing in subclause (1) prevents the organisation from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(4) Nothing in subclause (1) prevents the disclosure to, and use of, any information by a returning officer or person or body engaged in the election of members or officeholders of the organisation to determine the voting entitlements and to count the votes of members of the organisation, or to determine the appropriate nature and proportion of grower representation by region of production on the body engaged in the election of members or officeholders.

(5) Nothing in subclause (1) prevents the organisation from disclosing or using any information with the consent of every identifiable person to whom it relates.

23. Remuneration of persons conducting compliance audits—A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by the organisation at a rate determined by the Minister after consultation with the organisation.

Mediation in Case of Dispute

24. Appointment of mediator in case of dispute—(1) If a dispute arises as to—

- (a) Whether or not any person is required to pay the levy; or
 - (b) The amount of levy money any person is required to pay,—
- any party to the dispute may ask the President of the New Zealand Society of Chartered Accountants to appoint a person to organise and preside at a conference of the parties to the dispute, and 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.

(2) The mediator's appointment will be determined if—

- (a) The parties to the dispute have resolved the dispute by agreement; or
- (b) The parties have not resolved the dispute by agreement, and the mediator has resolved it by coming to one or more findings in relation to it.

25. Remuneration of mediators—(1) A mediator will be paid remuneration by way of fees and allowances agreed by the parties to the dispute concerned.

(2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the New Zealand Society of Accountants, or a person authorised by the President to do so, will—

(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.

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

27. Conference to be held in private—Except as provided in clause 28, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

28. 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 organised by the mediator.

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

30. 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 enable a dispute to be settled or resolved.

(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.

31. Mediator may resolve dispute in certain cases—(1) If—

(a) The mediator has organised and presided at a conference of the parties but the dispute has not been settled; or

(b) The mediator believes that the parties are unlikely to settle the dispute, whether or not they confer directly,—

the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's decision and the reasons for that decision.

(2) Subject to clause 32, the parties must comply with any decision of a mediator under subclause (1) of this clause.

32. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 31 may appeal to a District Court against the decision.

(2) The appeal is to 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 will—

- (a) Fix the time and place for the hearing of the appeal, and notify the appellant and 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.

MARIE SHROFF,
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 generally comes into force on 1 January 1998, imposes on commercially grown wheat grain a levy payable to United Wheat Growers NZ Limited.

The maximum rate at which the levy may be set is \$3.50 per tonne of wheat grain. The only purpose for which the levy money may be expended is the effecting of disaster relief insurance for wheat growers with the 3 required attributes of flat rate cover, no excess, and no minimum loss.

Unless earlier revoked, the order will expire 6 years after the date of its making 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*: 18 September 1997.
This order is administered in the Ministry of Agriculture and Forestry.