

Reprint
as at 12 December 2020



Commodity Levies (Wheat Grain) Order 2020 (LI 2020/86)

Patsy Reddy, Governor-General

Order in Council

At Wellington this 11th day of May 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture made in accordance with sections 5 and 6 of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Wheat Grain) Order 2020.

2 Commencement

This order comes into force on 11 August 2020.

Order: confirmed, on 12 December 2020, by section 9(e) of the Subordinate Legislation Confirmation Act 2020 (2020 No 66).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person whose business is or includes buying wheat grain or wheat grain product from a grower for resale or processing

grower means a person whose business is or includes growing 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 5

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

levy year means—

- (a) a period of 12 months starting on 1 February and ending on 31 January; but
- (b) for the first levy year, the period starting on 11 August 2020 and ending on 31 January 2021

mediator means—

- (a) a person appointed under clause 22; and
- (b) for a particular dispute, a mediator appointed to resolve the dispute

organisation means United Wheatgrowers (NZ) Limited

wheat grain product means wheat grain that is processed into a value-added processed product.

4 GST

Except where otherwise specified, a reference in this order to the payment or recovery of a levy must be read as including the payment or recovery of any GST payable on the levy.

Levy imposed

5 Levy on wheat grain

A levy is imposed on all wheat grain grown in New Zealand for sale or for processing into a wheat grain product.

*Setting levy rate***6 Basis for calculating levy**

The organisation must calculate the levy—

- (a) on the basis of the tonnage of the wheat grain sold at the first point of sale by the grower; or
- (b) if a grower processes wheat grain into a wheat grain product before selling the wheat grain, on the basis of the tonnage of the wheat grain before processing.

7 Rate of levy

- (1) The maximum rate of the levy is \$6 per tonne of wheat grain (exclusive of GST).
- (2) The levy must be paid at a single rate.
- (3) The board of the organisation must fix the actual rate of the levy (exclusive of GST),—
 - (a) for the first and second levy years, by any means by which it may lawfully make decisions; and
 - (b) for each subsequent levy year, after consulting growers at a general meeting held at least 1 month before the beginning of the levy year.
- (4) The board may fix a nil levy rate if suitable disaster relief insurance is not available.
- (5) If the board does not fix the actual rate of the levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under sub-clause (3) or (4).

8 Notifying levy rate

As soon as practicable after it has fixed the actual rate of the levy for a levy year, the organisation must notify that rate—

- (a) in the *Gazette*; and
- (b) in the organisation's newsletter; and
- (c) in writing to all collection agents known to the organisation at the time.

*Paying levy***9 Levy paid to organisation**

The levy must be paid to the organisation.

10 Growers primarily responsible for paying levy

Growers of wheat grain are primarily responsible for paying the levy.

11 Collection agent must pay levy

- (1) A collection agent who buys wheat grain or wheat grain product from a grower (except through another collection agent)—
 - (a) must pay the levy on the wheat grain or wheat grain product; and
 - (b) may recover the levy from the grower by deducting the amount of the levy from the payment made to the grower for the wheat grain or wheat grain product.
- (2) Before paying the levy to the organisation, a collection agent may deduct from the levy a collection fee of not more than 1.5% of the amount of the levy (exclusive of GST) plus the GST payable on the fee.

12 Conscientious objectors

If a grower or collection agent objects on conscientious or religious grounds to paying the levy to the organisation,—

- (a) the grower or collection agent must pay the equivalent amount to the Director-General of the Ministry for Primary Industries; and
- (b) the Director-General must pay the amount to the organisation.

13 Information required to determine payment

- (1) When a grower sells wheat grain product to a collection agent, at the time of sale or delivery, they must provide the collection agent with a statement of the tonnage of the wheat grain from which the wheat grain product was derived.
- (2) When a grower pays a levy to the organisation, they must state the tonnage of the wheat grain to which the payment relates.
- (3) A collection agent who pays a levy to the organisation must state—
 - (a) the tonnage of the wheat grain to which the payment relates; and
 - (b) the region where the wheat grain was produced.
- (4) The organisation may, in writing by email or post, request a grower or collection agent to provide the organisation with any information that it reasonably requires to determine the levy that the grower or collection agent must pay.
- (5) The grower or collection agent must provide the information as soon as practicable.

14 Due and latest dates for payment

- (1) The due date for payment of the levy,—
 - (a) by a collection agent, is the day on which the collection agent is liable to pay the grower for the wheat grain or wheat grain product;
 - (b) by a grower, is the day on which the grower is paid for the wheat grain or wheat grain product sold by the grower.
- (2) The latest date for payment is,—

- (a) in the case of a payment required under subclause (1)(a), the 20th day of the next month;
- (b) in the case of a payment required under subclause (1)(b), the 20th day of the month after the next month.

Spending levy money

15 Organisation must spend levy money

The organisation must spend or (pending expenditure) invest all levy money paid to it.

16 Purposes for which organisation may spend levy money

The organisation may not spend levy money for any purpose other than—

- (a) purchasing for growers disaster relief insurance that has the following attributes:
 - (i) flat-rate cover;
 - (ii) no excess;
 - (iii) no minimum loss;
 - (iv) premium payable on delivery of the product and only on the tonnage delivered; and
- (b) the administration costs of that insurance.

Records and confidentiality

17 Organisation must keep records

The organisation must, for each levy year, keep records of—

- (a) each amount of levy money paid to it; and
- (b) the name and address of each grower or collection agent who paid each amount of levy money and the date on which it was received; and
- (c) how levy money was spent or invested.

18 Growers must keep records

A grower must record, for each levy year, the following information in relation to each sale transaction:

- (a) the tonnage of wheat grain sold;
- (b) the tonnage of wheat grain product sold;
- (c) the name of the purchaser of the wheat grain or wheat grain product.

19 Collection agents must keep records

A collection agent must record, for each levy year, the following information:

- (a) the name and address of each grower from whom wheat grain or wheat grain product was bought:
- (b) the tonnage of wheat grain bought from each grower:
- (c) the tonnage of wheat grain product bought from each grower:
- (d) the amount of levy money collected and paid to the organisation for each quantity of wheat grain or wheat grain product bought from each grower:
- (e) the amount of collection fee deducted by the collection agent from each amount of levy money paid to the organisation on the grower's behalf.

20 Records must be kept for 2 years

The records required by clauses 17, 18, and 19 must be kept for at least 2 years after the end of the levy year to which they relate.

21 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under the Act in relation to this order; or
 - (b) under or because of this order.
- (2) An officer or employee of the organisation, or any person involved in collecting the levy, must not disclose the information to anyone other than an officer or employee of the organisation.
- (3) However, the organisation may disclose the information—
 - (a) for any of the following purposes:
 - (i) the production of records or accounts under section 17(1) of the Act:
 - (ii) the production of a statement under section 25 of the Act:
 - (iii) the giving of evidence in legal proceedings taken in relation to this order:
 - (iv) statistical and research purposes that do not involve the disclosure of personal information:
 - (v) invoicing for and collecting levies:
 - (b) if every identifiable person to whom the information relates consents:
 - (c) if the disclosure is required by law.

Mediation of disputes

22 Appointing mediators

- (1) This clause applies to any dispute about—
 - (a) whether or not any person is required to pay the levy; or

- (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (the **President**) to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President, or a person authorised by the President, may appoint a person to resolve the dispute by mediation.
- (4) 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 29.

23 Remunerating mediators

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

24 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties of those matters by email or post; and
- (c) preside at the conference.

25 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator if the mediator is satisfied that it is appropriate to do so in all the circumstances.

26 Conferences must be held in private

Only the parties to a dispute, the mediator, and representatives the mediator allows to attend may attend a conference organised by the mediator.

27 Right to be heard

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

28 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would 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.

29 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) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of their decision and the reasons for it.
- (3) The parties must comply with the mediator's decision.

30 Mediation costs

Each party must pay its own costs in relation to the mediation.

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision 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 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 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) Each party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.

- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

Compliance audits

32 Remunerating auditors

The organisation must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with the organisation.

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 11 August 2020, imposes a levy on wheat grain grown in New Zealand for sale or processing into a value-added product.

Wheat growers are primarily responsible for the payment of the levy. However, if a grower sells wheat grain or a wheat grain product to a collection agent, the collection agent must pay the levy and recover it from the grower. The levy is payable to United Wheatgrowers (NZ) Limited.

Prior to this order, a levy was imposed on wheat grain by the Commodity Levies (Wheat Grain) Order 2014. That order expires at the close of 10 August 2020 and is replaced by this order.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2021, unless confirmed earlier by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked on 10 August 2026 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 14 May 2020.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Wheat Grain) Order 2020 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Subordinate Legislation Confirmation Act 2020 (2020 No 66): section 9(e)