

**Reprint  
as at 6 October 2014**



**Commodity Levies (Wheat Grain)  
Order 2008**

(SR 2008/370)

Commodity Levies (Wheat Grain) Order 2008: revoked, on 6 October 2014, pursuant to section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Anand Satyanand, Governor-General

**Order in Council**

At Wellington this 6th day of October 2008

Present:

His Excellency the Governor-General in Council

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

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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 2008.
- 2 Commencement**  
This order comes into force on 16 December 2008.

Commodity Levies (Wheat Grain) Order 2008: confirmed, on 18 December 2009, by section 8(d) of the Subordinate Legislation (Confirmation and Validation) Act 2009 (2009 No 67).

### 3 Interpretation

In this order, unless the context otherwise requires,—

**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 the growing of wheat grain for sale or processing

**GST** means goods and services tax

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

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

**levy year** means,—

(a) for the first levy year, the period starting on the commencement of this order and ending on 31 January 2009; and

(b) for every other year, a period of 12 months starting on 1 February and ending on 31 January

**mediator** means a person appointed under clause 21(2); and, in relation to a dispute, means a mediator appointed to resolve it

**organisation** means the organisation referred to in clause 4(2)

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

### 4 Levy imposed

(1) A levy is imposed on all wheat grain grown in New Zealand for sale or for processing into a value-added product.

(2) The levy is payable to the organisation known on the commencement of this order as United Wheatgrowers (NZ) Limited.

### 5 Growers primarily responsible for paying levy

The grower of wheat grain is primarily responsible for paying the levy on it.

- 6 Collection agent to pay levy on wheat grain bought and recover it from growers**
- (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 (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.
- (2) Before paying the levy to the organisation, a collection agent may deduct from the levy a collection fee of not more than 5% of the amount of levy (exclusive of GST) plus the GST payable on the fee.
- 7 Basis of calculation of levy**
- The levy is to be calculated—
- (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 wheat grain product before selling the wheat grain, on the basis of the tonnage of the wheat grain before processing.
- 8 Maximum rate of levy**
- The maximum rate of the levy is \$5.00 per tonne of wheat grain (exclusive of GST).
- 9 Payment of levy**
- The levy must be paid at a single rate.
- 10 Board of organisation must fix actual rate of levy**
- (1) The board of the organisation must fix the actual rate of the levy,—
- (a) for the first and second levy years, by any means by which it may lawfully make decisions;
  - (b) for each subsequent levy year, after consulting growers at a general meeting at least 1 month before the beginning of the levy year.

- (2) The board of the organisation may fix a nil levy rate if suitable wheat produce insurance is not available.

**11 Rate if no rate fixed before beginning of levy year**

If the board does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 10.

**12 Notification of levy rate**

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

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

**13 When levy payable**

- (1) The due day 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 day for payment is,—
- (a) in the case of a payment required under subclause (1)(a), the 20th day of the following month;
  - (b) in the case of a payment required under subclause (1)(b), the 20th day of the second month following that in which the grower is paid for the wheat grain or wheat grain product.

**14 Organisation must spend levy money**

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

**15 Purposes for which levy money may 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, no minimum loss, premium payable on delivery of the product, and only on the tonnage delivered; and
- (b) the administration costs of that insurance.

**16 Conscientious objectors**

- (1) A grower or collection agent 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 and Forestry.
- (2) The chief executive must pay the amount to the organisation.

**17 Returns**

- (1) A grower who sells wheat grain product to a collection agent must, at the time of sale or delivery, provide the collection agent with a statement of the tonnage of the wheat grain from which the wheat grain product was derived.
- (2) A payment of levy by a grower to the organisation must be accompanied by a statement of the tonnage of the wheat grain to which the payment relates.
- (3) A payment of levy by a collection agent to the organisation must be accompanied by a statement of—
  - (a) the tonnage of the wheat grain to which the payment relates; and
  - (b) the region where the wheat grain was produced.
- (4) Every grower and collection agent must supply to the organisation, in writing and as soon as is reasonably practicable, any information required by the organisation for the purpose of calculating the levy.

**18 Records**

- (1) Every grower must, in each levy year, keep records of the following in relation to each sale transaction:

- (a) the tonnage of wheat grain sold; and
  - (b) the tonnage of wheat grain product sold; and
  - (c) the name of the purchaser of the wheat grain or wheat grain product.
- (2) Every collection agent must, in each levy year, keep records of—
- (a) the name and address of each grower from whom wheat grain or wheat grain product was bought; and
  - (b) the tonnage of wheat grain bought from each grower; and
  - (c) the tonnage of wheat grain product bought from each grower; and
  - (d) the amount of levy collected and paid to the organisation for each quantity of wheat grain or wheat grain product bought from each grower; and
  - (e) the amount of collection fee deducted by the collection agent from each payment of levy money to the organisation on the grower's behalf.
- (3) The organisation must, in each levy year, keep records of—
- (a) each amount of levy paid to it; and
  - (b) the name and address of each grower or collection agent who paid each amount of levy and the date on which it was received; and
  - (c) how levy money was spent or invested.
- (4) The records required by this clause must be retained for at least 2 years after the end of the levy year to which they relate.

## **19 Confidentiality of information**

- (1) No officer or employee of the organisation or any other person who gathers information may disclose (except to some other officer or employee of the organisation) any information obtained—
- (a) under or because of this order; or
  - (b) under the Commodity Levies Act 1990 in relation to this order.
- (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 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) Subclause (1) does not prevent the organisation from—
- (a) disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes; or
  - (b) disclosing or using any information for the purposes of invoicing and collecting the levy; or
  - (c) disclosing or using any information with the consent of every identifiable person to whom it relates.

## **20 Remuneration of persons conducting compliance audits**

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the organisation at a rate determined by the Minister after consultation with the organisation.

### *Mediation in case of dispute*

## **21 Appointment of 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) 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 28.

**22 Remuneration of mediators**

- (1) A mediator must be paid the remuneration (by way of fees and allowances) agreed to 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.

**23 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.

**24 Conference to be held in private**

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

**25 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.

**26 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 organised by a mediator, may be heard at the conference.

**27 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.

## **28 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 the decision.
- (3) The parties must comply with the decision of the mediator.

## **29 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 28 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 after 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.

**30 Revocation**

- (1) The Commodity Levies (Wheat Grain) Order 2002 (SR 2002/412) is revoked.
- (2) Despite subclause (1), amounts of levy that become payable before the commencement of this order to the organisation under the Commodity Levies (Wheat Grain) Order 2002 continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 9 October 2008.

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## Reprints notes

### **1**    *General*

This is a reprint of the Commodity Levies (Wheat Grain) Order 2008 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 and Validation) Act 2009 (2009 No 67): section 8(d)  
Commodity Levies Act 1990 (1990 No 127): section 13(1)

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