



## Commodity Levies (Arable Crops) Order 2012

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 2nd day of July 2012

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 and on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act, makes the following order.

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## Order

### 1 Title

This order is the Commodity Levies (Arable Crops) Order 2012.

### 2 Commencement

This order comes into force on 31 July 2012.

### 3 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Commodity Levies Act 1990

**arable crops** or **crops**—

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

**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 the industry organisation that, on the commencement of this order, was known as the Foundation for Arable Research Incorporated

**grower** means a person whose business is or includes growing arable crops

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985

**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 year, the period—
  - (i) starting on the commencement of this order; and
  - (ii) ending with the close of 31 December 2012; and
- (b) for each later levy year, the period starting on 1 January and ending with the close of 31 December

**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 (excluding GST) before the addition of any storage and freight charges and before the deduction of any costs, commission, or other charges:

- (a) in relation to arable crops grown for seed multiplication, the price that the arable crops would have attracted in field-dressed form in the locality in which the crops are 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 crops would have attracted in field-dressed form in the locality in which the crops are grown;
- (c) in relation to any other arable crops, the price of the crops 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.

#### *Payment of levy*

#### **5 Growers primarily responsible for paying levy**

- (1) Growers of arable crops are primarily responsible for paying the levy.

- (2) However, a grower is exempt from paying the levy in a levy year in respect of any quantity of arable crops if—
- (a) the grower uses the arable crops in the grower's farming operation; and
  - (b) the amount of levy that would otherwise be payable on the arable crops in that levy year does not exceed \$25 excluding GST.

**6 Collection agent must pay levy and recover it from growers**

- (1) A collection agent who buys arable crops from a grower—
- (a) must pay the levy (including any GST payable on it) on the arable crops; and
  - (b) may recover the levy (and any GST payable on it) from the grower by—
    - (i) deducting the amount of levy from the collection agent's payment to the grower at the first point of sale; or
    - (ii) recovering the amount as a debt due to the collection agent from the grower.
- (2) A collection agent may charge a collection fee of not more than 5% of the amount of levy collected (excluding GST) plus the GST payable on the fee by deducting the amount before paying the levy to FAR.

**7 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 crops is,—
- (a) if the arable crops (including arable crops processed by the grower) are 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 crops are not sold, the date on which the crops were 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.

**8 Combined levy payments**

(1) Despite clause 7, if an amount of levy payable for any month is less than \$2,000 plus GST, payment of that amount may be made with levy payments for 1 or more subsequent months of a relevant quarter (**combined levy**).

(2) The latest date for payment for a combined levy described in the first column of the following table is the date specified opposite that combined levy in the second column of the table:

<b>Combined levy</b>	<b>Latest date for payment</b>
Combined levy that comprises payments for the first and second month of a relevant quarter and that is \$2,000 or more plus GST	21st day of the third month of the relevant quarter
Combined levy that comprises payments for the first and second month of a relevant quarter and that is less than \$2,000 plus GST	21st day of the month following the close of the relevant quarter
Combined levy that comprises payments for the second and third month of a relevant quarter	21st day of the month following the close of the relevant quarter
Combined levy that comprises payments for the first, second, and third month of a relevant quarter (regardless of the amount)	21st day of the month following the close of the relevant quarter

(3) To avoid doubt, the latest date for payment of a levy relating to the third month of a relevant quarter (regardless of the amount and whether it is part of a combined levy) is the 21st day of the month following the close of the relevant quarter.

(4) In this clause, **relevant quarter** means (as applicable) the following dates:

- (a) 1 January to 31 March:
- (b) 1 April to 30 June:
- (c) 1 July to 30 September:
- (d) 1 October to 31 December.

**9 Penalty for late payment**

If any amount of levy has not been paid by the close of the latest date for payment, 5% of the amount of the unpaid levy (excluding additional levies owing under this clause) must be paid to FAR in addition to the amount otherwise payable.

*Rate of levy***10 Levy calculation**

The levy payable in a levy year is to be calculated on the basis of the selling price of the arable crops.

**11 Levy may be set at different rates**

The levy may be set at different rates for different classes of arable crops.

**12 Maximum levy rate**

The maximum rate of the levy is 1.5% of the selling price.

**13 Fixing of levy rate**

- (1) For the first levy year, the levy on arable crops is 0.8% of the selling price.
- (2) For each later levy year, FAR must fix the levy rate or rates before the start of the levy year in accordance with its decision-making rules.
- (3) If FAR does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under this clause.

**14 Notification of levy rate**

As soon as practicable after fixing a levy rate for a levy year, FAR must notify the rate—

- (a) in its newsletter to growers and collection agents; and
- (b) in the *Gazette*; and
- (c) on its Internet site.

*Expenditure of levy money***15 Levy money to be spent by FAR**

FAR must—

- (a) spend all the levy money paid to it; and
- (b) invest all levy money until it is spent.

**16 Purposes for which levy money may be spent**

- (1) FAR may spend levy money for all or any of the following purposes relating to arable crops:
  - (a) research and development;
  - (b) education and training;
  - (c) collection, collation, and publishing of information;
  - (d) day-to-day administration of FAR.
- (2) FAR must not spend levy money on commercial or trading activities.

**17 Consultation on spending levy money**

- (1) FAR must consult growers on how it proposes to spend levy money.
- (2) FAR may use 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***18 Records**

- (1) A grower who sells arable crops must, in each levy year, keep records of—
  - (a) each quantity of arable crops sold; and
  - (b) the price paid for each quantity of arable crops; and
  - (c) the name and address of the buyer of each quantity of arable crops.
- (2) A grower who assigns any quantity of arable crops for use within the grower's farming operation or processes the arable crops before sale must, in each levy year, keep records of—
  - (a) the quantity of arable crops assigned for use or processed (as the case may be); and



- (b) in the case of arable crops assigned for use within the grower's farming operation, the purpose that the quantity of arable crops was assigned for.
- (3) A collection agent must, in each levy year, keep records of—
  - (a) each quantity of arable crops sold by a grower to the collection agent; and
  - (b) the price paid for each quantity of arable crops; and
  - (c) the name and address of the grower; and
  - (d) the amount of levy paid to FAR for each quantity of arable crops.
- (4) FAR must, in each levy year, keep records of—
  - (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.
- (5) The records required by this clause must be kept for at least 2 years after the levy year to which the records relate.

### **19 Confidentiality of information**

- (1) No officer or employee of FAR, or any person involved in collecting levy money, may disclose (except to an officer or employee of FAR) any information obtained—
  - (a) under or because of this order; or
  - (b) under the Act 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 Act; or
  - (b) the production of any statement under section 25 of the Act; 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 Act.
- (3) Subclause (1) does not prevent FAR from disclosing or using any information—
  - (a) for statistical or research purposes, if the information is in a form that does not identify any individual; or

- (b) for the purposes of invoicing or collecting the levy; or
- (c) with the consent of every identifiable person to whom it relates; or
- (d) as required by law.

*Miscellaneous*

**20 Returns**

- (1) FAR may request, in writing, from each grower and collection agent any information that FAR reasonably requires for the purposes of determining the amount of levy payable by the grower or collection agent.
- (2) Each grower and collection agent must, as soon as is reasonably practicable after receiving a request from FAR, supply FAR with a written return of the information requested.

**21 Conscientious objectors**

- (1) A grower or collection agent who objects on conscientious or religious grounds to the manner of recovery of levy money by FAR may pay the amount concerned to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to FAR.

**22 Remuneration of persons conducting compliance audit**

A person appointed as an auditor under section 15 of the Act must be remunerated by FAR at a rate determined by the Minister for Primary Industries after consultation with FAR.

*Mediation of disputes*

**23 Appointment of mediators**

- (1) This clause applies to a dispute concerning—
  - (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 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 30.

**24 Remuneration of mediators**

- (1) A mediator is to be paid remuneration (by way of fees and allowances) as 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, 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 must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

**25 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 the matters specified in paragraph (a) by post or email; and
- (c) preside at the conference.

**26 Conference to be held in private**

Subject to clause 27, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

**27 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.

**28 Right to be heard**

The following persons may be heard at a conference with a mediator:

- (a) each party to the dispute; and

- (b) each representative of a party allowed by the mediator to attend 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,—
  - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
  - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the 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) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

## **31 Cost of mediation**

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

## **32 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the mediator's decision 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—
  - (a) within 28 days of the making of the decision concerned;or

- (b) 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
  - (b) notify the appellant and the other parties to the dispute; and
  - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every 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.

#### *Revocation*

### **33 Revocation**

- (1) The Commodity Levies (Arable Crops) Order 2006 (SR 2006/205) is revoked.
- (2) Despite subclause (1), amounts of levy that became payable to FAR before the commencement of this order under the Commodity Levies (Arable Crops) Order 2006 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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### **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 31 July 2012, revokes and replaces the Commodity Levies (Arable Crops) Order 2006.

This order imposes a levy on all arable crops (except maize grain, maize silage, and cereal silage, which are levied under separate orders) grown in New Zealand for sale or to be used within the

grower's farming operation. The levy is payable to the Foundation for Arable Research Incorporated.

Unless earlier revoked, this order expires 6 years after it is made by virtue of section 13(1) of the Commodity Levies Act 1990.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 3 July 2012.  
This order is administered by the Ministry for Primary Industries.

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