



Commodity Levies (Asparagus) Order 2012

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 23rd day of July 2012

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Administrator of the Government, 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 (Asparagus) Order 2012.

2 Commencement

This order comes into force on 1 September 2012.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

asparagus means spears of the species *Asparagus officinalis* or of any plant that is a hybrid of that species

commercial asparagus grower, in relation to a levy year, means the occupier of land totalling 500 m² or more that, as at 30 June in a levy year, is planted with asparagus for commercial purposes

Council means the industry organisation that, on the commencement of this order, was known as the New Zealand Asparagus Council Incorporated

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 levy year, the period beginning on the commencement of this order and ending on 31 March 2013; and

(b) for each later levy year, a period of 12 months beginning on 1 April and ending on 31 March in the following year

mediator means—

(a) a person appointed under clause 22(2); and

(b) for a particular dispute, a mediator appointed to resolve the dispute

NZGROWER means the publication published under that name before the commencement of this order.

*Levy imposed***4 Levy imposed**

- (1) A levy is imposed on all asparagus planted in New Zealand by commercial asparagus growers.
- (2) The levy is payable to the Council.

*Payment of levy***5 Growers responsible for paying levy**

Commercial asparagus growers are primarily responsible for paying the levy.

*Rate of levy***6 Calculation of levy**

- (1) The amount of levy payable by a commercial asparagus grower in a levy year is the amount calculated in accordance with the following formula:

$$a \times r$$

where—

- a is the area of land in hectares (expressed to 2 decimal places in the case of any part hectare) occupied by the commercial asparagus grower and planted with asparagus,—
- (a) in relation to the first levy year, as at the commencement of this order;
 - (b) in relation to any later levy year, as at 30 June in that levy year
- r is the rate of levy for the levy year fixed by or in accordance with clause 10.

- (2) Subclause (1) is subject to clause 10.

7 Levy to be paid at single rate

The levy is to be paid at a single rate.

8 Maximum rate of levy

The maximum rate of the levy is \$200 per hectare of asparagus (excluding GST).

9 Minimum levy payment

The minimum levy payment is the amount (excluding GST) that would be calculated under clause 6 on 1 hectare of asparagus.

10 Fixing of levy rate

- (1) For the first levy year, the levy rate is \$100 per hectare of asparagus (excluding GST).
- (2) For each later levy year, the Council must fix the levy rate at—
 - (a) its annual general meeting in that levy year; or
 - (b) any special general meeting called for the purpose and held at the beginning of the levy year.
- (3) If the Council does not fix the levy rate for any later levy year under subclause (2), the levy rate for that year is the rate most recently fixed under this clause.

11 Notification of rate of levy

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

- (a) in *NZGROWER*; or
- (b) if *NZGROWER* ceases to be published, in any publication that replaces it; or
- (c) if *NZGROWER* ceases to be published and no publication replaces it, in a publication specified for the purposes of this order by the Minister for Primary Industries by notice in the *Gazette*.

When levy payable

12 When levy payable

- (1) The levy is an annual levy and is payable for each levy year.
- (2) The due date for payment of the levy is 30 November in the levy year.
- (3) The latest date for payment of the levy is 28 February in the levy year.

13 Penalty for late payment

If a levy has not been paid on or before the latest date for payment under clause 12(3), the commercial asparagus grower must pay to the Council an increased levy comprising—

- (a) the amount of the levy outstanding as at the latest date for payment; plus
- (b) 10% of that amount.

*Expenditure of levy money***14 Council must spend levy money**

The Council must—

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

15 Purposes for which levy money may be spent

- (1) The Council may spend levy money for all or any of the following purposes relating to asparagus:
 - (a) product research and development;
 - (b) market research and development;
 - (c) promotion of asparagus;
 - (d) quality assurance;
 - (e) biosecurity;
 - (f) education;
 - (g) day-to-day administration of the Council.
- (2) The Council must not spend any levies on commercial or trading activities.

16 Consultation on spending levy money

- (1) The Council must consult commercial asparagus growers on how it proposes to spend levy money and provide details of the previous 12 months' expenditure of levy money—
 - (a) at every annual general meeting of the Council; and
 - (b) at any special meeting of the Council called for the purpose.
- (2) For the purposes of subclause (1), the Council must, at the meeting,—
 - (a) present a budget for the proposed expenditure of levy money to be collected in the following levy year; and

- (b) present accounts relating to the expenditure of levy money collected in the previous levy year; and
- (c) allow reasonable time at the meeting for commercial asparagus growers to discuss expenditure of levy money.

*Record-keeping requirements and confidentiality
of information*

17 Records

- (1) A commercial asparagus grower must, for each levy year, keep records of—
 - (a) the area of land occupied by the commercial asparagus grower and planted in asparagus:
 - (b) the amount of levy paid:
 - (c) the name of the entity that paid the levy.
- (2) The Council must, for each levy year, keep records of—
 - (a) the amount of each levy paid to it in that year and, in relation to each amount,—
 - (i) the date on which it was received; and
 - (ii) the name of the entity that paid it; and
 - (iii) the area of land to which the levy relates:
 - (b) how (if at all) levy money paid to it in that year was invested:
 - (c) how and when levy money paid to it was spent.
- (3) The records required by this clause must be retained for at least 2 years after the end of the levy year to which the records relate.
- (4) This clause does not require a commercial asparagus grower or the Council to keep a nil record.

18 Confidentiality of information

- (1) No officer or employee of the Council may disclose (other than to some other person who is an officer or employee of the Council) 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) under the Act in relation to this order.
- (3) Subclause (1) does not prevent the Council from disclosing or using any information—
- (a) (not being information relating to an identifiable person) obtained from a ballot held before the commencement of this order; or
 - (b) (not being information relating to an identifiable person) for statistical and research purposes; or
 - (c) for the purpose of collecting levies; or
 - (d) for the purpose of determining the voting entitlements, and the counting of votes, of members of the Council; or
 - (e) with the consent of every identifiable person to whom the information relates.

Miscellaneous

19 Returns

- (1) For the purpose of calculating the levy payable by a commercial asparagus grower in a levy year, a commercial asparagus grower must provide the Council with a written return of the information specified in subclause (2) requested in writing by the Council.
- (2) The information is the area of land in hectares (expressed to 2 decimal places in the case of any part hectare) occupied by the commercial asparagus grower and planted with asparagus,—
 - (a) in the case of the first levy year, as at the commencement of this order;
 - (b) in the case of any later levy year, as at 30 June in that levy year.
- (3) The commercial asparagus grower must provide the return to the Council as soon as is reasonably practicable after receiving the request from the Council but no later than the latest date for payment of the levy specified in clause 12(3).

20 Conscientious objectors

- (1) A commercial asparagus grower who objects on conscientious or religious grounds to the payment to the Council of an amount of levy money may pay the amount concerned to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to the Council.

21 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 Council at a rate determined by the Minister for Primary Industries after consultation with the Council.

*Mediation of disputes***22 Appointment of mediators**

- (1) This clause applies to any dispute concerning—
 - (a) whether a person is required to pay a levy; or
 - (b) the amount of levy money 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 when—
 - (a) the parties resolve the dispute by agreement; or
 - (b) the mediator resolves the dispute under clause 29.

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

25 Conference to be held in private

Subject to clause 26, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

26 Representatives

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

27 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.

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,—
 - (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.

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 the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

30 Costs of mediation

Each party to the dispute 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 under clause 29 may appeal to a District Court against the decision.
- (2) An 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 all other parties to the dispute of the time and place for the hearing of the appeal; 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) On hearing the appeal, the 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.

32 Revocation

- (1) The Commodity Levies (Asparagus) Order 2006 (SR 2006/156) is revoked.
- (2) Despite subclause (1), amounts of levy money that became payable to the Council before the commencement of this order under the Commodity Levies (Asparagus) Order 2006 continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,
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 2012, revokes and replaces the Commodity Levies (Asparagus) Order 2006 (which expired on 22 June 2012).

This order imposes a levy on asparagus planted in New Zealand for commercial purposes. The levy is payable to the New Zealand Asparagus Council Incorporated and is calculated on the basis of the area of land occupied by a commercial asparagus grower and planted in asparagus. The levy is intended to fund activities specifically related to asparagus, including research, promotion, and industry development.

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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Commodity Levies (Asparagus) Order 2012

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

Date of notification in *Gazette*: 26 July 2012.

This order is administered by the Ministry for Primary Industries.
