

Reprint  
as at 12 December 2020



**Biosecurity (Response—Milksolids Levy) Order 2019**  
(LI 2019/181)

Patsy Reddy, Governor-General

**Order in Council**

At Wellington this 5th day of August 2019

Present:

Her Excellency the Governor-General in Council

This order is made under section 100ZB of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity made after being satisfied of the matter described in section 100ZB(6) of that Act.

**Contents**

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Levy imposed	4
5 How levy may be spent	4
<i>Determination of levy</i>	
6 Basis for calculating levy	4

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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.**

7	Levy must be paid at single rate	4
8	Maximum levy rate	4
9	Rate of levy payable	4
10	Power to vary rate of levy	4
<i>Payment of levy</i>		
11	Dairy farmer primarily responsible for payment of levy	5
12	No exemptions from responsibility for payment of levy	5
13	Collection agent responsible for collecting levy	5
14	Responsibility of collection agent for payment of levy	5
15	When levy payable by collection agent	5
16	Additional levy for late payment	6
17	Collection agent must make returns to DairyNZ	6
18	Collection fee may be charged	6
<i>Miscellaneous</i>		
19	Records	7
20	Confidentiality of information	7
21	Conscientious objectors	8
22	Remuneration payable to auditor	8
<i>Arbitration in case of dispute</i>		
23	Appointment of arbitrator	8
24	Application of Arbitration Act 1996 to dispute	9
25	Payment of arbitration costs	9
26	Appeal to District Court	9

## Order

### 1 Title

This order is the Biosecurity (Response—Milksolids Levy) Order 2019.

### 2 Commencement

This order comes into force on 1 September 2019.

Order: confirmed, on 12 December 2020, by section 8(a) of the Subordinate Legislation Confirmation Act 2020 (2020 No 66).

### 3 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Biosecurity Act 1993

**agreement**—

(a) means the deed; and

- (b) includes any operational agreement of the kind referred to in section 100Z(3) of the Act that is made between—
  - (i) the Director-General; and
  - (ii) DairyNZ

**collection agent** means—

- (a) a dairy processor whose business includes buying milksolids from a dairy farmer; and
- (b) a person whose business includes buying milksolids from a dairy farmer for supply directly or indirectly to a dairy processor

**dairy farmer**—

- (a) means a person whose business includes producing milksolids for supply to a dairy processor; and
- (b) includes a dairy farm owner, a dairy farm leaseholder, and a sharemilker

**dairy processor** means a person whose business includes operating a dairy factory

**DairyNZ** means the incorporated society registered as DairyNZ Incorporated at the commencement of this order

**deed**—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by DairyNZ on 28 November 2018 (as may be revised or amended from time to time); and
- (b) includes a deed of the kind described in section 100Z(2) of the Act that replaces the deed referred to in paragraph (a)

**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 a levy

**levy year** means,—

- (a) for the first levy year, the period starting on 1 September 2019 and ending on 31 May 2020; and
- (b) for all levy years other than the first levy year, a period of 12 months starting on 1 June and ending on 31 May

**milksolids** means the milk-fat and protein components of raw bovine milk

**response activity** has the meaning given in section 100Y(3) of the Act

**sharemilker** means a person who—

- (a) is contracted to perform work on a dairy farm (except as an employee); and

- (b) is entitled under a sharemilking agreement to receive a share of the returns or profits from the dairy farm operation.

#### **4 Levy imposed**

- (1) A levy is imposed on milksolids produced in New Zealand by a dairy farmer for supply to a dairy processor.
- (2) The levy is payable to DairyNZ.

#### **5 How levy may be spent**

- (1) DairyNZ must spend all levy money paid to it on meeting its commitments relating to response activities under the agreement.
- (2) DairyNZ may invest levy money until it is spent.

### *Determination of levy*

#### **6 Basis for calculating levy**

The levy must be calculated on the basis of the quantity in kilograms of milksolids sold to a collection agent.

#### **7 Levy must be paid at single rate**

The levy must be paid at a single rate.

#### **8 Maximum levy rate**

- (1) The maximum rate of levy is 3.9 cents per kilogram of milksolids.
- (2) The maximum rate of levy is exclusive of GST.

#### **9 Rate of levy payable**

- (1) The levy rate is 2.9 cents per kilogram of milksolids for the first levy year.
- (2) This clause is subject to clause 10.

#### **10 Power to vary rate of levy**

- (1) DairyNZ may vary the levy rate if the board of DairyNZ approves the variation.
- (2) When varying a levy rate under this clause, DairyNZ must set—
  - (a) the varied rate at a level that is sufficient, but does not exceed what is necessary, to enable DairyNZ to meet its response activity commitments under the agreement; and
  - (b) a starting date for the varied rate that is after the latest date on which DairyNZ gives notice under subclause (3).
- (3) DairyNZ must notify the varied rates and their starting date—
  - (a) by email or post to all dairy farmers and dairy processors known to DairyNZ; and

- (b) in a major rural publication; and
  - (c) in DairyNZ's official magazine; and
  - (d) on DairyNZ's Internet site.
- (4) The levy rate set in accordance with this clause may be set—
- (a) at zero; and
  - (b) for any, or an undefined, period of time.

### *Payment of levy*

#### **11 Dairy farmer primarily responsible for payment of levy**

The dairy farmer is primarily responsible for paying the levy.

#### **12 No exemptions from responsibility for payment of levy**

There are no exemptions for dairy farmers from the responsibility for the payment of the levy under clause 11.

#### **13 Collection agent responsible for collecting levy**

A collection agent is responsible for collecting the levy unless the dairy farmer pays the levy money to the Director-General.

#### **14 Responsibility of collection agent for payment of levy**

- (1) A collection agent must pay the levy to DairyNZ if the collection agent buys milksolids from a dairy farmer.
- (2) The collection agent may recover the levy from the dairy farmer —
  - (a) by deducting the amount of the levy from the payment made to the dairy farmer; or
  - (b) by recovering the amount of the levy as a debt due from the dairy farmer.
- (3) If subclause (2)(a) applies, the collection agent must advise the dairy farmer by email or post of the amount of the levy deducted.

#### **15 When levy payable by collection agent**

- (1) The due date for payment by a collection agent of the levy is the date on which the dairy farmer sells the milksolids to the collection agent.
- (2) For the purposes of subclause (1), the latest date for payment of the levy is the 20th day of the month after the month in which the due date for payment occurs.
- (3) DairyNZ may, in its absolute discretion, extend the time for a collection agent to pay an amount of levy money if DairyNZ considers that the collection agent was or will be unable to pay the levy by the latest date for payment because of extraordinary circumstances beyond the collection agent's control.

**16 Additional levy for late payment**

- (1) If a collection agent does not pay an amount of levy money by the required date, the collection agent must pay DairyNZ—
  - (a) an additional levy of 5% of the amount of the unpaid levy money; and
  - (b) for each whole month that the amount (or part of the amount) remains unpaid after the required date, a further additional levy of 5% of the unpaid amount.
- (2) Any additional levy that remains unpaid is not itself subject to subclause (1).
- (3) DairyNZ must apply levy money paid by a collection agent to amounts owed by the collection agent in the order in which they fall due.
- (4) In subclause (1), **required date** means—
  - (a) the latest date for payment; or
  - (b) if clause 15(3) applies, the date allowed by DairyNZ.

**17 Collection agent must make returns to DairyNZ**

- (1) A collection agent must provide a completed return to DairyNZ when paying the levy.
- (2) The return must be in the form approved by DairyNZ.
- (3) The return must include, in relation to the levy being paid,—
  - (a) the unique supplier and party number for the dairy farmer; and
  - (b) the name and address of the dairy farmer; and
  - (c) the quantity in kilograms of milksolids purchased from the dairy farmer; and
  - (d) the date or dates on which the milksolids were purchased from the dairy farmer; and
  - (e) the amount of levy money collected; and
  - (f) the amount of levy money paid to DairyNZ; and
  - (g) the amount of the collection fee deducted or charged, if any.

**18 Collection fee may be charged**

- (1) A collection agent may charge DairyNZ a fee for collecting the levy, except where the collection agent is the dairy farmer who sells the milksolids.
- (2) The collection fee must not exceed 0.5% of the levy payable (exclusive of GST) plus the GST payable on the fee.
- (3) The collection agent may—
  - (a) deduct the collection fee from the collection agent's levy payment to DairyNZ; or
  - (b) recover the collection fee as a debt due from DairyNZ.

*Miscellaneous*

**19 Records**

- (1) A collection agent must, in each levy year, keep records of—
  - (a) the name and contact details of each dairy farmer from which milksolids were bought; and
  - (b) the quantity of milksolids (in kilograms) bought from each dairy farmer; and
  - (c) the rate at which the levy was collected; and
  - (d) the amount of levy money paid to DairyNZ; and
  - (e) the date on which—
    - (i) the levy money was paid to DairyNZ; and
    - (ii) the levy money was collected or recovered from the dairy farmer; and
  - (f) a copy of any return provided to DairyNZ.
- (2) DairyNZ must, in each levy year, keep records of—
  - (a) how the levy money was spent or invested; and
  - (b) each amount of levy money it receives; and
  - (c) the date on which each amount of levy money is received; and
  - (d) the name of the dairy farmer and collection agent who paid the levy money.
- (3) The records referred to—
  - (a) in subclause (1) must be kept for at least 10 years after the date of payment of the levy to which the records relate;
  - (b) in subclause (2) must be kept for at least 10 years after the end of the levy year to which the records relate.
- (4) A collection agent who is required to keep records must provide DairyNZ with information from the records as soon as is reasonably practicable after receiving a written request from DairyNZ for the information.

**20 Confidentiality of information**

- (1) This clause applies to information obtained—
  - (a) under or because of this order; or
  - (b) under the Act in relation to this order.
- (2) A person must not disclose information to anyone other than an officer or employee of DairyNZ unless—
  - (a) the disclosure is the giving of evidence in any legal proceedings taken in relation to this order; or

- (b) the disclosure is required by law; or
  - (c) the disclosure is allowed by subclause (3).
- (3) DairyNZ, a DairyNZ subsidiary, or a collection agent may disclose information—
- (a) for the following purposes:
    - (i) statistical or research purposes that do not involve the disclosure of personal information; and
    - (ii) collecting the levy; and
    - (iii) communicating with dairy farmers and supporting research development and extension activities; or
  - (b) if every identifiable person to whom the information relates consents.

## **21 Conscientious objectors**

- (1) A dairy farmer or collection agent who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to DairyNZ.

## **22 Remuneration payable to auditor**

- (1) An auditor appointed under section 100ZF of the Act is entitled to receive remuneration (as provided for under section 100ZF(8) of the Act) for the auditor's fees and allowances.
- (2) The fees and allowances referred to in subclause (1) are payable by DairyNZ at a rate agreed to by the Minister and DairyNZ.

### *Arbitration in case of dispute*

## **23 Appointment of arbitrator**

- (1) This clause applies to any dispute about—
  - (a) whether a person is required to pay the levy; or
  - (b) the amount of levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties to a dispute are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with Schedule 1 of the Arbitration Act 1996.
- (4) For the purposes of the Arbitration Act 1996,—
  - (a) an agreement under subclause (2) is an arbitration agreement; and
  - (b) the arbitrator (whether appointed by agreement or under subclause (3)) is an arbitral tribunal.

## **24 Application of Arbitration Act 1996 to dispute**

- (1) Subject to clause 26, the provisions of the Arbitration Act 1996 (including the provisions for procedures to be followed by an arbitral tribunal) apply to the resolution of a dispute submitted to arbitration under this order.
- (2) However, the provisions of this order prevail if there is any inconsistency between those provisions and the provisions of the Arbitration Act 1996.

## **25 Payment of arbitration costs**

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under Schedule 2 of the Arbitration Act 1996.

## **26 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator 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 that 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 all parties to the dispute.
- (4) Any party to the dispute 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.

Rachel Hayward,  
for the 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 2019, imposes a levy on milksolids produced in New Zealand by a dairy farmer for supply to a dairy processor. The dairy farmer is primarily responsible for the levy payment. The levy must be collected by a collection agent and paid to DairyNZ unless the dairy farmer pays the levy to the Director-General.

DairyNZ is the dairy industry sector organisation under Part 5A of the Biosecurity Act 1993 (the **Act**). Part 5A of the Act concerns agreements between Government and industry organisations to deal with unwanted organisms, including agreements for jointly funding the costs of response activities.

DairyNZ must spend the levy money paid to it on meeting its commitments for contributing to the costs of response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by DairyNZ on 28 November 2018 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and DairyNZ.

*Clause 9* sets the levy rate at 2.9 cents per kilogram of milksolids, but this rate may be varied under *clause 10* if, for example, a response activity is needed for an unwanted organism and DairyNZ is required to contribute to the costs of the response activity.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2020, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 8 August 2019.

## **Reprints notes**

### **1    *General***

This is a reprint of the Biosecurity (Response—Milksolids Levy) Order 2019 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 8(a)