



Commodity Levies (Milksolids) Order 2003

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 24th day of March 2003

Present:

The Right Hon Helen Clark presiding in Council

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

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Order

1 Title

This order is the Commodity Levies (Milk solids) Order 2003.

2 Commencement

This order comes into force on 1 June 2003.

3 Interpretation

In this order, unless the context otherwise requires,—

collection agent means—

- (a) a dairy company whose business is or includes buying milk solids from a dairy farmer; or
- (b) a person whose business is or includes buying milk solids from a dairy farmer for supply directly or indirectly to a dairy company

dairy company means a company within the meaning of the Companies Act 1993 and whose business is or includes carrying on a dairy factory and disposing of dairy produce

dairy farmer—

- (a) means a person whose business is or includes producing milk solids from bovine animals for supply to a dairy company; and
- (b) includes a dairy farm owner, a dairy farm leaseholder, and a sharemilker

Dairy InSight means the body that is known on the commencement of this order as Dairy InSight Incorporated

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 period of 12 months that begins on 1 June and ends on 31 May

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

milksolids means bovine milksolids produced in New Zealand by dairy farmers for supply directly or indirectly to dairy companies

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 all milksolids produced in New Zealand by dairy farmers for supply directly or indirectly to a dairy company.
- (2) The levy is payable to Dairy InSight.

Responsibility for payment of levy

5 Dairy farmer primarily responsible for paying levy

A dairy farmer who produces milksolids is primarily responsible for paying the levy on it.

6 Collection agent to pay levy on milksolids and recover it from dairy farmer

- (1) A collection agent who buys milksolids from a dairy farmer (except through another collection agent)—
 - (a) must pay the levy on the milksolids; and
 - (b) may recover the levy (and any GST paid in respect of it) from the dairy farmer—
 - (i) by deducting the amount of the levy from the payment made to the dairy farmer for the milksolids; or
 - (ii) by recovering the amount of the levy as a debt due from the dairy farmer.
- (2) If subclause (1)(b)(i) applies, the collection agent must provide the dairy farmer with information regarding the amount of levy deducted.

- (3) A collection agent may charge a collection fee of not more than 0.5% of the amount of levy collected (exclusive of GST) plus the GST payable on the fee by—
- (a) deducting the amount of the fee before paying the levy to Dairy InSight; or
 - (b) recovering the amount of the fee as a debt due from Dairy InSight.

Determination of levy by Dairy InSight

7 Basis of calculation of levy

- (1) The levy is to be calculated on the basis of the quantity in kilograms of milk solids supplied to a collection agent.
- (2) In determining the quantity of milk solids supplied to a collection agent, Dairy InSight may,—
 - (a) if it receives information on the number of kilograms of milk solids supplied by a dairy farmer to the collection agent, rely on that information without further enquiry; or
 - (b) if it receives information on the quantity of liquid milk supplied by a dairy farmer to the collection agent, convert that information to relate to kilograms of milk solids at the conversion rate that Dairy InSight determines.

8 Returns must be supplied to Dairy InSight

Every collection agent must supply to Dairy InSight, in writing and as soon as reasonably practicable, any information that Dairy InSight requests in writing for the purpose of calculating the levy.

9 Maximum rate of levy

The maximum rate of the levy is 4.3 cents per kilogram of milk solids (exclusive of GST).

10 Payment of levy

The levy must be paid at a single rate.

11 Dairy InSight must fix actual rate of levy

Dairy InSight must fix the actual rate of the levy,—

- (a) for the levy year ending on 31 May 2004, in accordance with its rules:
- (b) for any subsequent levy year, in accordance with its rules and after consulting dairy farmers' at an annual round of farmers' meetings held before the beginning of the levy year.

12 Rate if no rate fixed before beginning of levy year

If Dairy InSight 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 11.

13 Notification of levy rate

- (1) As soon as is practicable after the rate of levy for a levy year has been fixed, Dairy InSight must notify it in—
 - (a) the *Gazette*; and
 - (b) the *New Zealand Dairy Exporter*; and
 - (c) a publication published by Dairy InSight.
- (2) If the *New Zealand Dairy Exporter* ceases to be published, the rate of levy for a levy year must be notified in—
 - (a) a publication that replaces it; or
 - (b) if no publication replaces it, an industry publication chosen by Dairy InSight.

Payment of levy

14 When levy payable

- (1) The due day for payment of the levy to Dairy InSight is,—
 - (a) in the case of a collection agent that pays a dairy farmer for the supply of milk solids on a monthly basis, the 20th day of the month following the month in which the milk solids were supplied:
 - (b) in the case of a collection agent that pays a dairy farmer for the supply of milk solids on any other basis, every 3 months with payment for the first quarter due on 20 September in any levy year.
- (2) The latest day for payment of the levy is the last day of the month in which the levy falls due.

*Expenditure of levy money***15 Dairy InSight must spend levy money**

Dairy InSight must spend or (pending expenditure) invest all levy money paid to it.

16 Purposes for which levy money may be spent

- (1) Dairy InSight may spend levy money for the following purposes relating to bovine milksolids or dairy farmers:
 - (a) farm-focused research and information transfer:
 - (b) information collection and co-ordination of industry standards (including animal improvement programmes):
 - (c) industry promotion and development (including representing the views of dairy farmers):
 - (d) quality assurance (including product safety, animal health, and eradication of disease):
 - (e) education:
 - (f) environmental research and research into animal health and welfare (including farming practices):
 - (g) the day-to-day administration of Dairy InSight.
- (2) Dairy InSight must consult dairy farmers on how it proposes to spend levy money at an annual round of farmers' meetings called for the purpose.
- (3) Dairy InSight must not spend any levies on commercial or trading activities.

*Recordkeeping requirements and confidentiality
of information***17 Records**

- (1) Every collection agent must, in each levy year, keep records of—
 - (a) the name, address, and unique supplier number of each dairy farmer who supplied milksolids to it; and
 - (b) the quantity of milksolids supplied by each dairy farmer to it and the period during which the milksolids were supplied; and
 - (c) the amount of levy paid to Dairy InSight and the date of payment; and
 - (d) the amount of collection fee (if any) deducted by the collection agent.

- (2) Dairy InSight must, in each levy year, keep records of—
 - (a) each amount of levy paid to it; and
 - (b) the name and address of each 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.
- (3) The records required by this clause must be retained for at least 7 years after the end of the levy year to which they relate.

18 Confidentiality of information

- (1) No officer or employee of Dairy InSight or any other person who gathers information may disclose (except to some other officer or employee of Dairy InSight) 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 Dairy InSight, or a collection agent, 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; or
 - (d) disclosing or using any information as required by law.

*Miscellaneous***19 Conscientious objectors**

- (1) A dairy farmer or collection agent who objects on conscientious or religious grounds to the manner of recovery by Dairy InSight 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 Dairy InSight.

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 Dairy InSight at a rate determined by the Minister of Agriculture after consultation with Dairy InSight.

*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 Institute of Chartered Accountants of New Zealand 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 Institute of Chartered Accountants of New Zealand (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.

Marie Shroff,
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 June 2003, imposes a levy on milk solids produced by dairy farmers in New Zealand for supply

to dairy companies. The levy is payable to Dairy InSight Incorporated. Dairy farmers are primarily responsible for paying the levy, however, a collection agent who buys milksolids from a dairy farmer must pay the levy to Dairy InSight and recover it from the dairy farmer.

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

Date of notification in *Gazette*: 27 March 2003.

This order is administered in the Ministry of Agriculture and Forestry.
