



Commodity Levies (Meat) Order 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 19th day of April 2004

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 (Meat) Order 2004.

2 Commencement

This order comes into force on the earlier of the following:

- (a) 1 October 2004;
- (b) the date that Part 7 (Levy on Livestock) of the Meat Board Act 1997 is repealed.

3 Interpretation

In this order, unless the context otherwise requires,—

beef means meat derived from cattle, including beef cattle and dairy cattle but excluding bobby calves

collection agent means a person operating licensed premises

company means the company that is known on the commencement of this order as Meat and Wool New Zealand Limited

Director-General means the chief executive of the department for the time being responsible for the administration of this order or another agent specified by the company

goatmeat means meat derived from goats

levy means the levy imposed by clause 4

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

levy year—

- (a) means a period of 12 months that begins on 1 October and ends on 30 September; and

- (b) includes the period that begins on the commencement of this order and ends on 30 September 2005

licensed premises means—

- (a) a licensed abattoir or licensed export slaughterhouse (within the meaning of the Meat Act 1981);
- (b) the premises of an animal product business within the meaning of the Animal Products Act 1999 in which livestock are slaughtered under a risk management programme registered under Part 2 of that Act or a regulated control scheme made under Part 3 of that Act

livestock means cattle (including beef cattle and dairy cattle), goats, and sheep

livestock farmer means a person who—

- (a) owns livestock; and
- (b) is in the business of farming livestock, whether or not in conjunction with another business

meat means beef, goatmeat, or sheepmeat

mediator means a person appointed under clause 26(2); and, in relation to a dispute, means a mediator appointed to resolve it

sheepmeat means meat derived from sheep

trust account means a bank account at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989.

4 Levy imposed

- (1) A levy is imposed on meat from livestock slaughtered at licensed premises.
- (2) The levy is payable to the company.

Responsibility for payment of levy

5 Livestock farmer primarily responsible for paying levy

- (1) A livestock farmer who produces meat is primarily responsible for paying the levy on it.
- (2) No livestock farmer is exempt from paying the levy.

6 Collection agent to pay levy on meat and recover it from livestock farmer

- (1) A collection agent who slaughters livestock at licensed premises—
 - (a) must pay the levy on the livestock slaughtered (and any goods and services tax payable in respect of it) to the Director-General; and
 - (b) may recover the levy (and any goods and services tax paid in respect of it)—
 - (i) by deducting the amount of the levy from the payment made to the livestock farmer for the livestock, if the collection agent buys the livestock from the farmer; or
 - (ii) by recovering the amount of the levy as a debt due from the livestock farmer, if the collection agent slaughters the livestock on the farmer's behalf.
- (2) If subclause (1)(b)(i) applies, the collection agent must provide the livestock farmer with information regarding the amount of levy deducted.
- (3) A collection agent may charge a collection fee of not more than 0.25% of the levy payable (exclusive of goods and services tax) plus the goods and services tax payable on the fee by deducting the amount of the fee before paying the levy to the Director-General.

7 Collection agent must operate trust account

- (1) A collection agent who slaughters livestock at licensed premises must—
 - (a) keep a trust account that covers all of its licensed premises; and
 - (b) deposit an amount of money equal to the levy on the livestock (and any goods and services tax payable in respect of it) in the trust account within 15 days after the date of slaughter.
- (2) A collection agent must—
 - (a) ensure that the trust account is identified as a trust account kept by the collection agent for the purposes of this order; and
 - (b) take all practicable steps to ensure that—

- (i) the trust account is used for holding amounts required to be held by this order; and
 - (ii) the balance in the trust account on any day is not less than the amount outstanding to the Director-General on that day by the collection agent.
- (3) The amount outstanding to the Director-General by a collection agent on any day is the remainder obtained by subtracting—
 - (a) the total of all levy money paid by the collection agent to the Director-General before that day as required by this order; from
 - (b) the total of all amounts required to be deposited in the trust account by the collection agent up to and including the previous day.
- (4) The amount in the trust account that is due to be paid to the Director-General—
 - (a) is to be treated as held on trust for the company; and
 - (b) is not available for the payment of any creditor of the collection agent (other than the company); and
 - (c) is not liable to be attached or taken in execution at the instance of any creditor of the collection agent (other than the company).
- (5) A person who ceases to be a collection agent must continue to maintain the trust account until all the money payable to the Director-General in respect of the period during which the person was a collection agent has been paid.
- (6) Subclause (5) does not limit or affect any obligation or liability under this order of any person who has become a collection agent.

Determination of levy by company

8 Basis of calculation of levy

The levy is to be calculated on the basis of the number of livestock (per head) slaughtered at licensed premises.

9 Returns must be supplied to Director-General

- (1) Every collection agent must supply to the Director-General, in a form of return specified by the company, any information that the company or the Director-General reasonably requires in order to determine the amounts of levy payable, including

the number and classes of livestock slaughtered at the licensed premises.

- (2) Returns must be supplied within 10 days after the end of each week to which the return relates.

10 Levy may be fixed at different rates

A different rate of levy may be fixed for different classes of cattle, goats, and sheep slaughtered, according to age, sex, or breed.

11 Maximum rate of levy

The maximum rate of the levy is (exclusive of goods and services tax)—

- (a) for beef, \$4.40 per head of cattle slaughtered; and
- (b) for goatmeat, \$0.60 per head of goats slaughtered; and
- (c) for sheepmeat, \$0.50 per head of sheep slaughtered.

12 Company must fix actual rate of levy

The company must fix the actual rates of the levy,—

- (a) for the levy year ending on 30 September 2005, by any lawful means;
- (b) for any subsequent levy year, in accordance with its constitution and after consulting livestock farmers on the rate of the levy at an annual round of farmer meetings.

13 Rate if no rate fixed before beginning of levy year

If the company 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 12.

14 Notification of levy rate

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

- (a) in the *Gazette*; and
- (b) in a publication sent to all levy payers known to the company; and
- (c) by direct mail to all collection agents known to the company.

*Payment of levy***15 When levy payable**

- (1) The due date for payment of the levy to the Director-General is the date on which the livestock is slaughtered at licensed premises.
- (2) The latest date for payment of the levy is 18 days after a demand is made by the Director-General or any longer period that the company allows.
- (3) Clause 16(4) overrides subclause (2) if a demand for an estimated amount of levy is made.

16 Demands for estimated amounts of levy money

- (1) The company may estimate the levy money payable and the Director-General may provide a levy demand for that estimated amount if—
 - (a) a return has not been supplied within the time specified in clause 9(2); or
 - (b) the company is not satisfied that the information contained in a return is complete and correct.
- (2) A collection agent who receives a demand under subclause (1) may dispute the estimated amount demanded within 10 days of the demand being made by giving a notice of dispute to the Director-General, who must then refer it to the company; however, this applies only to the initial demand and not to a substitute demand made under subclause (3)(c)(i).
- (3) Within 15 days of receiving a notice of dispute,—
 - (a) the company must consider the matters raised in it; and
 - (b) the company must undertake any audit of the operations of the collection agent concerned that the company thinks appropriate and the collection agent allows; and
 - (c) by written notice to the collection agent depending on the company's decision on the dispute, the Director-General must—
 - (i) withdraw the demand, and substitute another for it; or
 - (ii) withdraw the demand, and indicate that no other demand will be substituted for it; or
 - (iii) confirm the demand.
- (4) The latest date for payment of the levy is—

- (a) 18 days after the demand is made or any longer period that the company allows, unless the collection agent has, within those 18 days, disputed the estimate under subclause (2) or clause 26; or
- (b) if the estimate has been disputed, within 18 days after the demand is confirmed or substituted under subclause (2) or clause 26.

17 Penalty for late payment

- (1) If any levy money (or goods and services tax payable on that money) has not been paid on or before the latest date for payment, the collection agent must pay an additional amount of 10% of the amount owing at the end of each month.
- (2) However, the company may, in its absolute discretion, waive the payment of the additional amount and may allow the collection agent an extension of time in which to pay the levy money if the company considers that the default arose because of extraordinary circumstances beyond the control of the collection agent.

18 Refunds

- (1) The Director-General must refund levy money found to have been overpaid or paid in error to the appropriate person unless that person has already received reimbursement of the amount.
- (2) However, before paying a refund under subclause (1), the Director-General may—
 - (a) require the person to be refunded to provide the Director-General with the relevant levy returns and any other information justifying the refund and allowing the Director-General to determine or check the amount of the refund; and
 - (b) verify the returns and any information provided under paragraph (a) in any way the Director-General thinks fit.

19 Payment of levy money by Director-General to company

- (1) All levy money (and any goods and services tax paid in respect of it) received by the Director-General must be paid to the company.

- (2) Payments of levy money made by the Director-General to the company are subject to section 17 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997.

Expenditure of levy money

20 Company or subsidiary must spend levy money

The company or a subsidiary of the company must spend or (pending expenditure) invest all levy money paid to it.

21 Purposes for which levy money may be spent

- (1) The company or a subsidiary of the company may spend levy money for the following purposes relating to the meat industry:
- (a) trade policy:
 - (b) market development that is co-ordinated with exporters and processors:
 - (c) farm-focused research and information transfer:
 - (d) joint research with other parties if there is likely to be significant benefit to levy payers:
 - (e) protection and improvement of animal health and welfare:
 - (f) information and data collection:
 - (g) industry education, training, and raising the profile of the industry:
 - (h) representing the views of livestock farmers:
 - (i) industry services including risk management and maintaining a contingency fund:
 - (j) the day-to-day administration of the company.
- (2) The company must consult livestock farmers on how it proposes to spend levy money at an annual round of farmer meetings in accordance with its constitution held before each levy year.
- (3) The company must not spend any levy money on commercial or trading activities.
- (4) Subclause (2) does not apply in respect of the levy year beginning on the commencement of this order.

*Recordkeeping requirements and confidentiality
of information*

22 Records

- (1) Every livestock farmer must, in each levy year, keep records of the number of livestock sent, and the dates on which they were sent, to licensed premises for slaughter.
- (2) Every collection agent must, in each levy year, keep records of—
 - (a) the name and contact details of each levy payer from whom the collection agent collects or recovers levy money; and
 - (b) the number of livestock slaughtered in each species and class within species, and the date of slaughter; and
 - (c) the amount of levy paid to the Director-General and the date of payment.
- (3) The company must, in each levy year, keep records of—
 - (a) each amount of levy money paid to it and the date of payment; and
 - (b) the name and contact details of every person from whom the Director-General or the company received levy money; 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.

23 Confidentiality of information

- (1) No officer or employee of the company, a collection agent, or any other person who gathers information may disclose (except to some other officer or employee of the company, collection agent, or other person) 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 company, 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

24 Conscientious objectors

- (1) A livestock farmer or collection agent who objects on conscientious or religious grounds to the manner of recovery by the company of an amount of levy money may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to the company.

25 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 company at a rate determined by the Minister of Agriculture after consultation with the company.

Mediation in case of dispute

26 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, including a dispute about a demand for an estimated amount under clause 16.
- (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 33.

27 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.

28 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.

29 Conference to be held in private

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

30 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.

31 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.

32 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.

33 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.

34 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 33 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 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.

Diane Morcom,
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 comes into force on 1 October 2004 or the date that Part 7 of the Meat Board Act 1997 is repealed if that happens before 1 October 2004. A levy is imposed on meat produced by livestock farmers. The levy is payable to Meat and Wool New Zealand Limited, by way of the Director-General of the Ministry of Agriculture and Forestry or other agent specified by the company. Livestock farmers are primarily responsible for paying the levy but persons operating licensed premises will act as collection agents in respect of animals slaughtered on the premises. The collection agents must pay the levy to the Director-General or other agent and may recover it from the livestock farmer. Levy money that has been collected from farmers but not yet paid must be held in a trust account.

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

Date of notification in *Gazette*: 22 April 2004.

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