

DAIRY BOARD AMENDMENT BILL

EXPLANATORY NOTE

Clause 1 relates to the Bill's Short Title.

PART I

NEW ZEALAND DAIRY BOARD

Clause 2 has 2 effects. First, it alters the Board's constitution, replacing the 2 Government appointees with 2 directors nominated by the Board and appointed by the Minister for their commercial expertise.

Secondly, it provides that in future the wards for which directors are elected are to be described by regulations (and therefore capable of being from time to time altered by regulations) rather than specified in the principal Act.

Clause 3 amends section 3A of the principal Act, which relates to the powers of the Board. The Board has very considerable rights, powers, and privileges; but section 3A (3) of the principal Act provides that the Board must not exercise them "except for the purpose of performing its functions". The amendment replaces section 3A (3) with a new provision that relaxes this restriction a little, by providing that the Board must not exercise its rights, powers, and privileges except for the purpose of doing any thing that is necessary or desirable to enable the Board to perform its functions or "obtain, in the interests of the New Zealand dairy industry, the best possible long-term returns for export produce".

Clause 4 amends provisions relating to the terms of office of directors. At present, most directors are appointed or elected for 4 years; but directors over 64 when appointed or elected serve for a shorter term. In future, in order to keep the terms of directors in alignment, successors to directors appointed or elected for a term of less than 4 years will serve for only the balance necessary to make up 4 years.

Clause 5 provides that in future the Board will run its own elections; and makes clear that the so-called "New Zealand director" may be elected otherwise than by postal ballot.

Clause 6 amends the provisions of the principal Act relating to the quorum required for meetings of the Board. The quorum remains at 7, but in future directors representing at least 2 wards must be present.

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PART II

MARKETING OF DAIRY PRODUCE

Clause 7 has 2 effects. First, it repeals the provision inserted (in 1980) in the principal Act that gave the Board power to control the export of certain mixtures of dairy produce and other substances.

Secondly, it allows exporters to apply to the Board for permission to export dairy produce, and requires the Board to give its permission if satisfied that the produce is intended for markets in States that do not impose quantitative restrictions on imports, and that the export of the produce will not harm overall returns to the New Zealand dairy industry.

The Board will not be able to use its powers of compulsory acquisition in respect of dairy produce for which an exporter has applied for permission to export, unless permission has been refused.

Clause 8 repeals section 31 of the principal Act, which requires the Board to consult the Minister before acquiring or marketing dairy produce manufactured overseas.

PART III

FURTHER POWERS OF BOARD WITH RESPECT TO DAIRY INDUSTRY

Clause 9 repeals section 40 of the principal Act, which empowers the making of regulations regulating and controlling the marketing of bobby calves and vells, regulating and controlling the supply of containers to owners and occupiers of dairy factories, and promoting and administering milk and cream supply zoning schemes.

Clause 10 amends section 41 of the principal Act, which relates to the charges on dairy produce payable to the Board in relation to the development of the dairy calf and bobby calf industries, and the organisation and development of the orderly marketing of bobby calves and vells. In future, charges are not to be fixed without the approval of the dairy industry.

PART IV

MISCELLANEOUS PROVISIONS

Clause 11 repeals and replaces sections 66 and 67 of the principal Act, which relate to the preparation and amendment of the Board's financial statements. In future, financial statements prepared by the Board will have to include certain information (operating profit or loss, extraordinary profit or loss, dividend value per share, and net tangible asset backing) in respect of its subsidiaries. Also, the Board's statements will in future be audited by an auditor appointed by the Board with the approval of the dairy industry. At present the statements are audited by the Audit Office.

Clause 12 inserts into the principal Act a new section requiring a review of the Board's performance and efficiency every 5 years. The review is to be carried out by a person appointed by the Minister after consultation with the Board. The terms of reference of the review will be agreed by the Minister and the Board, or specified by Order in Council where there is no agreement. The person carrying out the review will prepare a report and give copies to the Minister and the Board. The Board must give copies (free) to manufacturers who ask for one. The Board and the Minister will each pay half of the cost of every review.

Clause 13 amends section 69 (1) of the principal Act to allow the description of wards, and the number of representatives each will have, by regulation. Regulations must be made on the recommendation of the Minister, the Minister must make a recommendation on the recommendation of the Board, and the

Board may not make a recommendation without the approval of the dairy industry. Until regulations are made, existing wards will continue.

Clause 14 removes the Board (and also several other producer boards) from the control of the Higher Salaries Commission Act 1977.

Hon. Jim Sutton

DAIRY BOARD AMENDMENT

ANALYSIS	
Title	PART III
1. Short Title	FURTHER POWERS OF BOARD WITH RESPECT TO DAIRY INDUSTRY
	9. Bobby calves, containers, and zoning of supplies of milk or cream
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	PART IV
	MISCELLANEOUS PROVISIONS
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	66. Financial statements to be prepared
	67. Statements to be audited
	12. Performance reviews
	13. Regulations
	14. Amendments to Higher Salaries Commission Act 1977

A BILL INTITULED

An Act to amend the Dairy Board Act 1961

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5 **1. Short Title**—This Act may be cited as the Dairy Board Amendment Act 1990, and shall be read together with and deemed part of the Dairy Board Act 1961* (hereinafter referred to as the principal Act).

PART I

NEW ZEALAND DAIRY BOARD

- 10 **2. New Zealand Dairy Board established**—Section 3 (2) of the principal Act (as substituted by section 2 (1) of the Dairy Board Amendment Act 1988) is hereby amended by repealing

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Amendments: 1977, No. 149; 1980, No. 81; 1985, No. 11; 1988, No. 86

paragraphs (a) and (b), and substituting the following paragraphs:

- “(a) Two directors (being people who, in the Board’s opinion, are qualified by commercial expertise to be directors) appointed by the Minister on the Board’s recommendation; and 5
- “(b) Seven directors, of whom—
- “(i) One shall be elected for each of the wards described by regulations made under this Act, and specified by those regulations as having 1 10 representative; and
- “(ii) Two shall be elected for each of the wards (if any) described by regulations under this Act, and specified by those regulations as having 2 15 representatives.”

3. Board to have powers of natural person—Section 3A of the principal Act (as inserted by section 5 (1) of the Dairy Board Amendment Act 1988) is hereby amended by repealing subsection (3), and substituting the following subsection:

- “(3) The Board shall not exercise any of its rights, powers, or privileges, except for the purpose of— 20
- “(a) Performing its functions; or
- “(b) Doing any thing that is necessary or desirable to enable the Board to—
- “(i) Perform its functions; or 25
- “(ii) Obtain, in the interests of the New Zealand dairy industry, the best possible long-term returns for export produce.”

4. Terms of office of directors—(1) Section 4 of the principal Act (as substituted by section 4 of the Dairy Board Amendment Act 1980) is hereby amended by inserting, after subsection (1), the following subsections: 30

“(1A) Subject to **subsection (1c)** of this section, where, on or after the commencement of the Dairy Board Amendment Act 1990, there is appointed or elected a successor of a director who, by virtue of paragraph (a) or paragraph (b) of subsection (1) of this section, went out of office before the 30th day of June in the fourth year following the director’s appointment or election, the successor shall be appointed or elected for a term expiring with that day. 35 40

“(1B) For the purposes of **subsection (1A)** of this section, when appointing any director under paragraph (a) or paragraph (d) of section 3 (1) of this Act, the Minister or (as the case may be) the

New Zealand Co-operative Dairy Company Limited shall specify the director whose successor the director appointed is.

“(1c) Where,—

5 “(a) At the same time, elections are held to elect 2 directors for a ward; and

 “(b) By virtue of **subsection (1A)** of this section, the directors will be elected for terms of different lengths,—
the higher polling director (or, where the 2 directors elected have received the same number of votes, one of them chosen
10 by the Board by lot) shall be deemed to have been elected for the longer term.

 “(1D) **Subsection (1c)** of this section shall have effect in relation to any election as if both directors concerned have not attained the age of 64 years before it.”

15 (2) Section 4 (2) of the principal Act (as substituted as aforesaid) is hereby consequentially amended by omitting the expression “subsection (1)”, and substituting the expression “subsections (1) and (1A)”.

20 (3) Section 4 of the principal Act (as amended by **subsection (1)** of this section) applies to all directors, whether elected or appointed before or after the commencement of this Act.

5. Election of members—(1) Section 10 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

25 “(1) The Board shall from time to time appoint a returning officer, who shall make all arrangements necessary for the conduct of every election held under this Act.”

 (2) The said section 10 is hereby consequentially amended by—

30 (a) Omitting from subsection (3) the word “Every”, and substituting the words “Except to the extent that the Board may have determined some other manner for the purpose of section 3 (2) (c) of this Act, every”; and

 (b) Repealing subsection (6).

35 (3) The following regulations are hereby consequentially revoked:

 (a) The Dairy Board Election Regulations 1937:

 (b) The Dairy Board Election Regulations 1937, Amendment No. 1:

40 (c) The Dairy Board Election Regulations 1937, Amendment No. 2.

6. Meetings of Board—Section 12 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) No business shall be transacted at any meeting of the Board at any time unless at that time— 5

“(a) At least 7 directors are present; and

“(b) The directors present include directors elected (under section 3 (2) (b) of this Act) in respect of at least 2 different wards.”

PART II 10

MARKETING OF DAIRY PRODUCE

7. Powers of Board as to acquisition and marketing of export produce—(1) Section 17 of the principal Act (as substituted by section 3 of the Dairy Board Amendment Act 1972) is hereby amended by repealing subsection (1A) (as inserted by section 6 of the Dairy Board Amendment Act 1980), and substituting the following subsections: 15

“(1A) Any person who wishes to export dairy produce may apply to the Board for permission to do so, specifying the markets where the produce is intended to be sold; and the Board shall permit the person to export the produce for sale in those markets if satisfied that— 20

“(a) The markets are all in States that do not impose quantitative restrictions on the importation of dairy produce; and 25

“(b) The export of the produce to the markets would not have the result of reducing (directly or indirectly) overall returns to the New Zealand dairy industry.

“(1B) Notwithstanding sections 14 (1) (b) and 18 of this Act, without the consent of the owner of the produce concerned, the Board— 30

“(a) Shall not acquire any export produce in respect of which an application has been made under **subsection (1A)** of this section, unless the Board has refused under that subsection to permit its export; and 35

“(b) Shall not acquire any export produce that it has under **subsection (1A)** of this section permitted any person to export.”

(2) Section 17 (1) (h) of the principal Act (as substituted as aforesaid, and amended by section 3 (2) of the Dairy Board Amendment Act 1988) is hereby consequentially amended by omitting the word “For”, and substituting the words “Subject to **subsections (1A) and (1B)** of this section, for”. 40

(3) Section 6 of the Dairy Board Amendment Act 1980 is hereby consequentially repealed.

5 **8. Acquisition and marketing of export produce manufactured overseas**—(1) Section 31 of the principal Act (as substituted by section 5 (3) of the Dairy Board Amendment Act 1988) is hereby repealed.

(2) Subsections (3) to (5) of section 5 of the Dairy Board Amendment Act 1988 are hereby consequentially repealed.

PART III

10 FURTHER POWERS OF BOARD WITH RESPECT TO DAIRY INDUSTRY

9. Bobby calves, containers, and zoning of supplies of milk or cream—Section 40 of the principal Act is hereby repealed.

15 **10. Levy on dairy produce**—(1) Section 41 of the principal Act is hereby amended by adding the following subsection:

20 “(3) The Board shall not fix or amend any charge under subsection (1) of this section without the approval of the dairy industry; but every charge fixed or amended (whether before or after the commencement of the Dairy Industry Amendment Act 1990) shall continue in force from season to season until the Board revokes, amends, or replaces it.”

(2) Section 69 (2) (a) of the principal Act is hereby consequentially repealed.

25 (3) The Dairy Produce Levy Regulations 1984 are hereby consequentially amended by—

(a) Omitting from regulation 2 the definition of the term “general levy”; and

(b) Revoking regulations 4 and 5 (1).

30 (4) The Dairy Produce Levy Regulations 1984 may be amended or revoked as if the amendments effected by **subsection (3)** of this section had been effected by Order in Council and not by that subsection.

PART IV

35 MISCELLANEOUS PROVISIONS

11. New sections substituted—(1) The principal Act is hereby amended by repealing sections 66 and 67 (as substituted by section 12 of the Dairy Board Amendment Act 1988), and substituting the following sections:

“66. Financial statements to be prepared—As soon as is practicable after the 31st day of May in each year, the Board shall cause to be prepared—

- “(a) In respect of the Board, the following statements:
- “(i) Statements of the Board’s financial position at the end of the season ending with that day: 5
 - “(ii) Statements of all changes in the Board’s financial position during that season:
 - “(iii) Statements of the Board’s revenue and expenditure during that season: 10
 - “(iv) All other statements necessary to show fully the Board’s financial position, and the financial results of its proceedings and operations, during that season; and
- “(b) In respect of every subsidiary (within the meaning of section 158 of the Companies Act 1955) of the Board, the following statements: 15
- “(i) Statements of the subsidiary’s operating profit or loss for the financial year most recently ended before that day, and its operating profit or loss for the year before: 20
 - “(ii) Statements of any extraordinary profit or loss of the subsidiary for the financial year most recently ended before that day, and any extraordinary profit or loss of the subsidiary for the year before: 25
 - “(iii) Statements of the subsidiary’s dividend value per share (if any) at the end of the financial year most recently ended before that day, and its dividend value per share (if any) at the end of the year before: 30
 - “(iv) Statements of the subsidiary’s net tangible asset backing per share at the end of the financial year most recently ended before that day, and its net tangible asset backing per share at the end of the year before: 35
 - “(v) A summary of the report of the directors or other management of the subsidiary on its operations during the financial year most recently ended before that day.

“67. Statements to be audited—(1) Subject to subsection (2) of this section,— 40

- “(a) The statements referred to in section 66 (a) of this Act shall be audited by an auditor appointed or reappointed

by the Board within 12 months before the end of the period to which the statements relate; but

5 “(b) The Board shall not appoint or reappoint an auditor without the approval of the dairy industry (obtained within the period within which the Board is required to appoint or reappoint the auditor).

10 “(2) Where, at the end of the period to which any statement referred to in **section 66 (a)** of this Act relates, there is no person appointed auditor under **subsection (1)** of this section, the statement shall be audited by an auditor appointed by the Minister.

“**(3)** For the purposes of the audit of any statement referred to in **section 66 (a)** of this Act, an auditor appointed under this section has, and may exercise and perform,—

15 “(a) All the functions, duties, and powers of an auditor under the Companies Act 1955; and

20 “(b) All the powers the Audit Office has under the Public Finance Act 1977 in respect of public money and public stores, and the audit of local authorities’ accounts.”

(2) Section 67A of the principal Act (as substituted as aforesaid) is hereby consequentially amended—

25 (a) By omitting the expression “section 66”, and substituting the expression “**section 66 (a)**”; and

(b) By omitting the words “Audit Office” wherever they occur, and substituting in each case the word “auditor”.

(3) Section 30 (7) of the principal Act is hereby consequentially repealed.

30 **12. Performance reviews**—The principal Act is hereby amended by inserting, after section 67A (as substituted by section 12 of the Dairy Board Amendment Act 1988), the following section:

35 “67B. (1) As at the 1st day of June in—

“(a) 1992; and

“(b) Every fifth year thereafter,—

there shall be carried out, in accordance with this section, a review of the Board’s performance and efficiency (in this section referred to as a performance review).

40 “(2) Every performance review shall relate to the Board’s performance and efficiency during the 5 years before the day as at which the review is carried out.

“(3) Every performance review shall be carried out by a person appointed by the Minister after consultation with the Board.

“(4) The terms of reference of every performance review shall be— 5

“(a) Agreed by the Minister and the Board; or

“(b) Subject to **subsection (5)** of this section, specified by the Governor-General by Order in Council.

“(5) The Governor-General shall not make an order under **subsection (4) (b)** of this section unless satisfied, on reasonable grounds, that— 10

“(a) During February and March in the year the performance review concerned is to be carried out, the Minister made reasonable efforts to reach agreement with the Board on the terms of reference for the review; and 15

“(b) No agreement was reached.

“(6) The Board’s performance and efficiency includes—

“(a) The extent (if any) to which the Board has established objectives for the performance of its functions; and 20

“(b) Any such objectives established; and

“(c) The extent (if any) to which the Board achieved any such objectives established; and

“(d) The extent (if any) to which the Board has put in place policies and strategies to use its resources effectively and efficiently for the purpose of achieving its objectives; and 25

“(e) Any such policies and strategies put in place; and

“(f) The manner in which any such policies and strategies put in place were put in place;— 30

but the fact that any other matter is agreed or specified under **subsection (4)** of this section is conclusive evidence that it relates to the performance and efficiency of the Board.

“(7) Every person who carries out a performance review shall, after carrying it out, prepare a written report on the conclusions the person reached as a result of carrying it out; and shall give copies of the report to the Minister and the Board. 35

“(8) If asked by any manufacturer to do so, the Board shall without charge give the manufacturer a copy of any copy of a report given to the Board under **subsection (7)** of this section. 40

“(9) Of the reasonable costs of a performance review (that is to say the remuneration agreed by the Minister to be paid to the person carrying it out and reporting to the Minister and the Board, and the person’s reasonable costs in doing so),— 45

- “(a) The Board shall pay half; and
 “(b) The Minister shall pay half out of public money appropriated by Parliament for the purpose,—
 5 and the person may recover those costs accordingly, as a debt due to the person.”

13. Regulations—(1) Section 69 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

- “(2A) Subject to **subsection (2B)** of this section, the Governor-
 10 General may from time to time, on the recommendation of the Minister, make for the purposes of section 3 (2) (b) of this Act regulations—

- “(a) Describing the wards for which directors are to be elected; and
 15 “(b) Specifying them as having either 1 or 2 representatives.
 “(2B) The Minister shall not under **subsection (2A)** of this section recommend the making of any regulations, unless the Board has recommended to the Minister that they should be made; and the Board shall not without the approval of the dairy
 20 industry recommend to the Minister that any such regulations should be made.”

(2) The following enactments are hereby consequentially repealed:

- (a) The First and Second Schedules to the principal Act;
 25 (b) Section 2 (2) of the Dairy Board Amendment Act 1973;
 (c) The Dairy Board Amendment Act 1985;
 (d) Subsections (2) to (4) of section 2 of the Dairy Board Amendment Act 1988.

- (3) Notwithstanding **subsection (2) (a)** of this section, until wards
 30 are in fact described by regulations under **section 69 (2A)** of the principal Act (as inserted by **subsection (1)** of this section),—

- (a) The wards immediately before the commencement of this Act described in the First and Second Schedules to the principal Act shall be deemed to be described by
 35 such regulations; and
 (b) The ward immediately before the commencement of this Act described in the Second Schedule to the principal Act shall be deemed to be specified as having 2 representatives; and
 40 (c) Each of the wards immediately before the commencement of this Act described in the First Schedule to the principal Act shall be deemed to be specified as having 1 representative.

14. Amendments to Higher Salaries Commission Act 1977—The First Schedule to the Higher Salaries Commission Act 1977 (as substituted by section 14 of the Higher Salaries Commission Amendment Act 1988) is hereby amended by omitting the items relating to the New Zealand Apple and Pear Marketing Board, the New Zealand Dairy Board, the New Zealand Meat Producers Board, the New Zealand Milk Board, the New Zealand Pork Industry Board, and the New Zealand Wool Board. 5