

[AS REPORTED FROM THE PRIMARY PRODUCTION COMMITTEE]

House of Representatives, 29 July 1992.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. John Falloon

DAIRY BOARD AMENDMENT

ANALYSIS

Title	
1. Short Title	
PART I	
NEW ZEALAND DAIRY BOARD	
2. New Zealand Dairy Board established	
3. Board to have powers of natural person	
4. Terms of office of directors	
5. Election of members	
6. Meetings of Board	
PART II	
MARKETING OF DAIRY PRODUCE	
7. Powers of Board as to acquisition and marketing of export produce	
8. Acquisition and marketing of export produce manufactured overseas	
PART III	
FURTHER POWERS OF BOARD WITH RESPECT TO DAIRY INDUSTRY	
9. Bobby calves, containers, and zoning of supplies of milk or cream	
10. Levy on dairy produce	
PART IV	
MISCELLANEOUS PROVISIONS	
11. New sections substituted	
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**—(1) This Act may be cited as the Dairy Board Amendment Act (1990) 1992, and shall be read together with and deemed part of the Dairy Board Act 1961* (hereinafter referred to as the principal Act).

*Reprinted with amendments: 1976, Vol. 4, p. 3337
Amendments: 1977, No. 149; 1980, No. 81; 1985, No. 11; 1988, No. 86

No. 51—2

New

(2) **Section 2** of this Act shall come into force on a day appointed by the Governor-General by Order in Council, made on the recommendation of the Minister.

(3) The Minister shall not recommend the making of an order under **subsection (2)** of this section unless satisfied that 11 directors have been appointed or elected (as the case may be) under **section 3c** of the principal Act (as inserted by **section 3b** of this Act).

(4) Except as provided in **subsection (2)** of this section, this Act shall come into force on the day on which it receives the Royal assent.

Struck Out

PART I

NEW ZEALAND DAIRY BOARD

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 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

“(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 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 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:

Struck Out

“(3) The Board shall not exercise any of its rights, powers, or privileges, except for the purpose of—

“(a) Performing its functions; or

5 “(b) Doing any thing that is necessary or desirable to enable the Board to—

“(i) Perform its functions; or

10 “(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:

15 “(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

20 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.

“(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,—

30 “(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,—

35 the higher polling director (or, where the 2 directors elected have received the same number of votes, one of them chosen 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.”

40 (2) Section 4 (2) of the principal Act (as substituted as aforesaid) is hereby consequentially amended by omitting the

Struck Out

expression “subsection (1)”, and substituting the expression “subsections (1) and (1A)”.

(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

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

“(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.” 10

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

(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 15

(b) Repealing subsection (6).

(3) The following regulations are hereby consequentially revoked: 20

(a) The Dairy Board Election Regulations 1937:

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

(c) The Dairy Board Election Regulations 1937, Amendment No. 2. 25

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— 30

“(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.” 35

PART II

MARKETING OF DAIRY PRODUCE

7. Powers of Board as to acquisition and marketing of export produce—(1) Section 17 of the principal Act (as

Struck Out

5 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:

“(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—

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

15 “(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—

20 “(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

25 “(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”.

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

35 **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.

Struck Out

PART III

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. 5

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

“(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.” 10

(2) Section 69 (2) (a) of the principal Act is hereby consequentially repealed. 15

(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 20

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

(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. 25

PART IV

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: 30

“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— 35

“(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:

Struck Out

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:
 “(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
10 “(b) In respect of every subsidiary (within the meaning of
section 158 of the Companies Act 1955) of the
Board, the following statements:
 “(i) Statements of the subsidiary’s operating profit
or loss for the financial year most recently ended
15 before that day, and its operating profit or loss for
the year before:
 “(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:
20 “(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:
25 “(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:
30 “(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.
35 “67. **Statements to be audited**—(1) Subject to subsection (2)
of this section,—
 “(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
40 period to which the statements relate; but

Struck Out

“(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). 5

“(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. 10

“(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,—

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

“(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 67^A of the principal Act (as substituted as aforesaid) is hereby consequentially amended— 20

(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”. 25

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

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

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

“(a) 1992; and

“(b) Every fifth year thereafter,— 35

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).

“(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. 40

Struck Out

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

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

“(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.

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

“(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

“(b) No agreement was reached.

20 “(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

“(b) Any such objectives established; and

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

25 “(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

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

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

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.

35 “(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.

40 “(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.

Struck Out

“(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),— 5
 “(a) The Board shall pay half; and
 “(b) The Minister shall pay half out of public money appropriated by Parliament for the purpose,—
 and the person may recover those costs accordingly, as a debt due to the person.” 10

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-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— 15

“(a) Describing the wards for which directors are to be elected; and

“(b) Specifying them as having either 1 or 2 representatives. 20

“(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 industry recommend to the Minister that any such regulations should be made.” 25

(2) The following enactments are hereby consequentially repealed:

(a) The First and Second Schedules to the principal Act:

(b) Section 2 (2) of the Dairy Board Amendment Act 1973: 30

(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 are in fact described by regulations under **section 69 (2A)** of the principal Act (as inserted by **subsection (1)** of this section),— 35

(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 such regulations; and 40

Struck Out

- (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
- 5 (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.

10 **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

15 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.

New

20

PART I

NEW ZEALAND DAIRY BOARD

2. Constitution of Board—(1) The principal Act is hereby amended by inserting, before section 3A (as inserted by section 5 (1) of the Dairy Board Amendment Act 1988), the following

25 section:

“3AA. The Board shall comprise—

“(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

30 recommendation; and

“(b) Eleven directors, each of whom has been either—

“(i) Appointed by a co-operative company; or

“(ii) Elected by a group of co-operative companies.”

35 (2) Section 7 of the principal Act is hereby consequentially amended by repealing subsection (3), and substituting the following subsections:

New

- “(3) An extraordinary vacancy arising in respect of a director appointed by the Minister shall be filled by the appointment of a new director by the Minister in accordance with **section 3AA (a)** of this Act. 5
- “(3A) Subject to **subsection (3)** of this section, an extraordinary vacancy shall be filled by the election or appointment (as the case may be) of a new director—
- “(a) By the co-operative company or group of co-operative companies that elected or appointed the vacating director; or 10
- “(b) By its successor.”
- (3) Section 12 (4) of the principal Act is hereby consequentially amended by omitting the words “of whom at least one shall be a director appointed under paragraph (a) of subsection (2) of section 3 of this Act”, and substituting the words “who shall include directors appointed or elected by at least 3 different co-operative companies or (as the case may be) groups of co-operative companies”. 15
- (4) The following enactments are hereby consequentially repealed: 20
- (a) Sections 3 (2), 3 (2A), 3 (3), 8, and 10 of, and the First and Second Schedules to, the principal Act:
- (b) The Dairy Board Amendment Act 1973:
- (c) So much of the Schedule to the Dairy Board Amendment Act 1980 as relates to section 3 (3), section 6 (2), or section 8 of the principal Act: 25
- (d) The Dairy Board Amendment Act 1985:
- (e) Sections 2 and 14 of the Dairy Board Amendment Act 1988: 30
- (f) So much of the Schedule to the Dairy Board Amendment Act 1988 as relates to section 3 (3) or section 10 (4) of the principal Act.
- (5) The following regulations are hereby consequentially revoked: 35
- (a) The Dairy Board Election Regulations 1937:
- (b) The Dairy Board Election Regulations 1937, Amendment No. 1:
- (c) The Dairy Board Election Regulations 1937, Amendment No. 2. 40

New

5 **3. Board to have powers of natural person**—(1) 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—

“(a) Performing its functions; or

10 “(b) Entering into any financial transaction or financial obligation intended to—

“(i) Avoid or lessen any present or possible future risk to the Board’s current or future income or assets; or

“(ii) Lessen any liability of the Board; or

15 “(iii) Avoid or lessen any possible future liability of the Board; or

“(iv) Maximise the Board’s current or future income (whether net or gross).”

20 (2) Section 14 (1) (b) of the principal Act (as substituted by section 3 (2) of the Dairy Board Amendment Act 1988) is hereby consequentially amended by inserting, after the word “acquire”, the words “, pay for,”.

(3) For the avoidance of doubt, it is hereby declared that—

25 (a) Every contract and arrangement entered into by the Board after the 30th day of March 1988 and before the commencement of this section is (and was) as valid and effectual as it would be (and would have been) if this section had come into force on the 31st day of March 1988; and

30 (b) Every action of the Board in entering into any such contract or arrangement was as valid and effectual as it would have been if this section had come into force on that day.

35 **3A. Application of Part II of Commerce Act 1986 to Board**—The principal Act is hereby amended by inserting, after section 3A (as inserted by section 5 (1) of the Dairy Board Amendment Act 1988), the following section:

40 “3B. (1) It is hereby declared that nothing in Part II of the Commerce Act 1986 applies in respect of any act, matter, or thing done by any person (whether the Board, any person

New

acting on the Board's behalf, or any other person) under any of the provisions of this Act specified in **subsection (2)** of this section.

"(2) The provisions referred to are sections 17 (1) (h), 17 (1A), 18, 25A, 26, 26A, 26C, 26D, 28, and 28A.

"(3) In determining, for the purposes of section 43 (1) of the Commerce Act 1986, whether any act, matter, or thing done at any time by any person (whether the Board, any person acting on the Board's behalf, or any other person) under—

"(a) Any provision of this Act not specified in **subsection (2)** of this section; or

"(b) Any enactment other than this Act; or

"(c) Any Order in Council made under any enactment other than this Act,—

is or was specifically authorised by any enactment or Order in Council made under any Act, no regard shall be had to **subsection (1)** of this section.

"(4) Notwithstanding that some of the provisions of this Act specified in **subsection (2)** of this section were enacted or amended after the commencement of the Commerce Act 1986, **subsections (1) to (3)** of this section shall have effect as if they had come into force on that commencement."

3B. New sections inserted—The principal Act is hereby amended by inserting, before section 4 (as substituted by section 4 (1) of the Dairy Board Amendment Act 1980) the following sections:

"3c. Board may authorise appointment and election of directors—(1) Subject to **subsections (2) and (3)** of this section, the Board may from time to time, by notice in the *Gazette*,—

"(a) Authorise a co-operative company to appoint a specified number of directors; or

"(b) Authorise a group of co-operative companies to elect a specified number of directors; or

"(c) Revoke any notice under **paragraph (a) or paragraph (b)** of this subsection.

"(2) The Board shall not exercise any of its powers under **subsection (1)** of this section without—

"(a) The approval of the dairy industry; and

"(b) The written consent of the Minister.

New

“(3) The Board shall exercise its powers under **subsection (1)** of this section so that—

5 “(a) The total number of directors authorised to be appointed or elected is 11; and

“(b) No group of co-operative companies is authorised to elect more than 5 directors; and

“(c) No co-operative company is involved in the tenure of a total of more than 5 directors.

10 “(4) For the purposes of this section and **section 3c** of this Act, a co-operative company is involved in the tenure of a number of directors if it—

“(a) Is authorised to appoint that number of directors; or

15 “(b) Is a member of a group of co-operative companies authorised to elect that number of directors; or

“(c) Holds shares representing more than 10 percent of the issued share capital of a co-operative company that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, that number of directors; or

20 “(d) Is effectively under the same control as a co-operative company that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, that number of directors.

25 “**3D. Co-operative companies to cease to be members of electing groups in certain cases**—Where—

“(a) One of the following events occurs:

30 “(i) A co-operative company acquires shares representing more than 10 percent of the issued share capital of another co-operative company (in which it previously had no shares) that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, one or more directors; or

35 “(ii) A co-operative company gains effective control of another co-operative company (of which it previously did not have effective control) that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, one or more directors; or

40

New

“(iii) A person with effective control of one or more co-operative companies gains effective control of another (of which it previously did not have effective control) that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, one or more directors; and 5

“(b) But for this section, a co-operative company would thereby become involved in the tenure of more than 5 directors,— 10

the co-operative company in which shares have been acquired (or, as the case may be, of which effective control has been gained) shall immediately be deemed to have ceased (as the case may be) to be authorised to appoint a director or directors, or to be a member of that group. 15

“3E. **Manner of election**—(1) Subject to **subsection (2)** of this section, the Board shall from time to time approve a manner of election of directors by groups of co-operative companies.

“(2) If approved before the commencement of **section 2** of the Dairy Board Amendment Act 1992, the manner shall include the manner by which it is to be determined which of 2 or more directors elected (by virtue of **section 4c** of that Act) for terms of differing lengths is to serve for which term. 20

“(3) The Board shall not approve a manner of election without— 25

“(a) The approval of the dairy industry; and

“(b) The written consent of the Minister.

“(4) Where a manner of election is approved under this section, the approval of the manner previously approved shall be deemed to have been revoked. 30

“(5) Every election of directors shall be held in the manner for the time being approved under this section.”

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 subsection: 35

“(1A) Where, on or after the commencement of **section 4 (1)** of the Dairy Board Amendment Act 1992, 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 40

New

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."

5 (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)".

10 (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.

4A. Alternates of directors—The principal Act is hereby amended by repealing section 6, and substituting the following section:

15 "6. (1) From time to time—

"(a) The Minister, in the case of a director appointed by the Minister; or

"(b) A co-operative company, in the case of a director appointed by the company or another co-operative company whose successor it is; or

20 "(c) A group of co-operative companies, in the case of a director elected by the group or another group whose successor it is,—

may appoint or elect (in the case of an election, in the same manner as the director is required to be elected) an alternate for a director, and give the Board written notice of the names of the director and the alternate.

25 "(2) While a director is absent from a meeting of the Board, or of any committee of the Board, the alternate (if any) for the time being of the director—

30 "(a) May attend the meeting; and

"(b) While attending, shall be deemed to be a director (and, as the case may be, a member of the committee), and may act accordingly."

35 **4B. Consequential amendments**—(1) Section 2 of the principal Act is hereby consequentially amended by inserting, in their appropriate alphabetical order, the following definitions:

New

“‘Co-operative company’ means a body that is a registered co-operative dairy company or a registered co-operative milk marketing company:

“‘Registered co-operative dairy company’ means a co-operative dairy company (within the meaning of section 2 (1) of the Co-operative Dairy Companies Act 1949) that is registered under that Act: 5

“‘Registered co-operative milk marketing company’ means a co-operative milk marketing company (within the meaning of section 2 (1) of the Co-operative Companies Act 1956)— 10

“(a) That is registered under that Act; and

“(b) Whose articles of association require all its shares to be held, in proportion to the milk that (in its directors’ opinion) is or is likely to be supplied to it, by the persons supplying that milk: 15

“‘Voting milkfat’—

“(a) In relation to a registered co-operative dairy company, means own-supply milkfat; and 20

“(b) In relation to a registered milk marketing co-operative company, means milkfat supplied by the company to, and manufactured into dairy produce by, a manufacturer who or that is not a registered co-operative dairy company.” 25

(2) Section 2A (1) of the principal Act (as inserted by section 4 of the Dairy Board Amendment Act 1988) is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) In the case of an action to which **section 3c (2) (a)** or **section 3e (3) (a)** of this Act applies, the Board has obtained, at a meeting of duly authorised representatives of co-operative companies or in writing, the approval to the taking of the action of co-operative companies (including, as the case requires, successors of co-operative companies) whose aggregate voting milkfat during the most recent complete season and the 2 seasons before it was, in the Board’s opinion, more than three-quarters of the aggregate quantity of the voting milkfat of all co-operative companies for the period: 30 35 40

“(b) In any other case,—

New

- 5 “(i) The Board has obtained, at a meeting of duly
authorised representatives of co-operative
companies or in writing, the approval to the taking
of the action of co-operative companies (including,
as the case requires, successors of co-operative
companies) whose aggregate voting milkfat during
the most recent complete season and the 2 seasons
before it was, in the Board’s opinion, more than two-
10 thirds of the aggregate quantity of the voting milkfat
of all co-operative companies for the period; or
“(ii) The Board has obtained, at a meeting of duly
authorised representatives of co-operative
15 companies or in writing, the approval to the taking
of the action of co-operative companies (including,
as the case requires, successors of co-operative
companies) whose aggregate voting milkfat during
the most recent complete season and the 2 seasons
before it was, in the Board’s opinion, more than half
20 of the aggregate quantity of the voting milkfat of all
co-operative companies for the period; and not more
than one co-operative company failed or refused to
approve the taking of the action.”

25 **4c. Transitional**—(1) Where, before the commencement of
section 2 of this Act, the Board authorises a co-operative
company to appoint a specified number of directors or
authorises a group of co-operative companies to elect a
specified number of directors, it shall indicate the term for
30 which each director is to serve (being a term of 1, 2, 3, or 4
years determined at the Board’s sole discretion); and in that
case—

- (a) If only one director is authorised to be appointed or
elected, the director appointed or elected shall serve
for the term indicated:
35 (b) If 2 or more directors are authorised to be appointed or
elected for terms of equal length, each shall serve for
the term indicated:
(c) If 2 or more directors are authorised to be appointed, and
the Board has indicated that they are to serve for
40 terms of different lengths, the co-operative company
appointing them shall, when doing so, indicate the

New

length of term of each of them; and each shall serve for the term indicated:

- (d) If 2 or more directors are authorised to be elected, and the Board has indicated that they are to serve for different lengths, the length of the term of each of them shall be determined by reference to the manner of election for the time being approved under **section 3E** of the principal Act (as inserted by **section 4** of this Act); and each shall serve for the term determined. 5 10
- (2) **Subsection (1)** of this section shall have effect notwithstanding **section 4 (1)** of the principal Act, but subject to **sections 4 (2), 7 (2), and 7 (4)** of the principal Act.
- (3) The term of office of a director appointed or elected by a co-operative company or group of co-operative companies before the commencement of **section 2** of this Act shall commence on that commencement. 15
- (4) On the commencement of **section 2** of this Act,—
- (a) All directors holding office immediately before that commencement shall go out of office; but 20
- (b) No extraordinary vacancies shall result, and instead—
- (i) The directors already appointed or elected by a co-operative company or co-operative companies shall take office; and
- (ii) The Minister may appoint 2 directors under **section 3AA (a)** of the principal Act (as inserted by **section 2** of this Act). 25

[**Note:** *There are no new clauses corresponding to clauses 5 and 6 of the Bill as introduced.*]

PART IA 30

NEW PART IA OF PRINCIPAL ACT

6A. Capital and assets of Board—(1) The principal Act is hereby amended by inserting, after Part I, the following Part:

“PART IA

“CAPITAL AND ASSETS OF BOARD 35

“**15A. Initial capital of Board**—(1) Subject to **section 15B** of this Act, the Board shall be deemed to have an initial capital of \$750,000,000.

New

“(2) The initial capital shall be deemed to have been paid up in full on the 1st day of June 1991 from the Board’s total reserves and accumulated funds.

5 “15B. **Changes in capital**—(1) Subject to **subsection (2)** of this section, the Board may from time to time resolve to increase or decrease its capital.

10 “(2) The Board shall not resolve to increase or decrease its capital by any amount unless, within 6 months before doing so, it has obtained in accordance with **section 15c** of this Act the approval to an increase or decrease of that amount of registered qualifying persons whose aggregate qualifying milkfat for the most recent complete season was, in the Board’s opinion, more than three-quarters of the aggregate quantity of

15 the qualifying milkfat of all qualifying persons for the season.
“(3) Within 28 days of resolving to increase or decrease its capital the Board shall make the transfers to or from its total reserves or accumulated funds to give effect to the resolution.

20 “15c. **Obtaining approval of registered qualifying persons**—Where the Board wishes to obtain the approval of registered qualifying persons to an increase or decrease in its capital, the following provisions shall apply:

25 “(a) The Board shall fix a day, time, and place, for a meeting of registered qualifying persons at which their approval is to be sought:

30 “(b) At least 21 days before the day fixed, the Board shall give every registered qualifying person, in writing,—
“(i) Notice of the day, time, and place, fixed; and
“(ii) A description, in enough detail to enable them to decide whether or not to approve it, of the proposed increase or decrease in capital and the reasons for it:

35 “(c) Subsections (5) and (6) (in relation to who presides at the meeting) and (8) (in relation to deliberative and casting votes) of section 12 of this Act shall have effect as if the meeting is a meeting of the Board:

“(d) Subject to **paragraph (c)** of this section, the director presiding at the meeting shall regulate its procedures as the director thinks fit.

New

“15D. Board to notify registered qualifying persons of change in capital—Within 28 days of increasing or decreasing its capital the Board shall—

“(a) Cause to be published in the *Gazette*; and

“(b) Send to every registered qualifying person whose address is known to the Board,—
notice of the amount of the increase or reduction, the reasons for it, and when it took effect.

“15E. Net assets to exceed capital—The Board shall take all reasonable steps to preserve its net assets at a level above its capital for the time being.

“15F. Secretary to keep register of qualifying persons—The Secretary shall, in accordance with this Part of this Act, keep a register of qualifying persons.

“15G. Board’s capital owned by registered qualifying persons—A registered qualifying person owns a proportion of the Board’s capital bearing the same relationship to that capital as the person’s qualifying milkfat bears to all qualifying milkfat.

“15H. Ownership not transferable—(1) To the extent (if any) that **section 15G** of this Act creates rights, those rights are not capable of—

“(a) Being transferred, mortgaged, pledged, hypothecated, or otherwise alienated; or

“(b) Passing by operation of law.

“(2) Subject to **section 15o (4)** of this Act, ownership certificates under **section 15n** of this Act are neither redeemable nor capable of—

“(a) Being transferred, mortgaged, pledged, hypothecated, or otherwise alienated; or

“(b) Passing by operation of law.

“15i. Qualifying persons may notify Board—(1) At any time, a person who or that, at any time during the most recent complete season before that time and the 2 seasons before it, was a qualifying person may give the Secretary written notice of the person’s qualifying milkfat for each of those 3 seasons.

“(2) A notice given by a qualifying farmer shall be accompanied by a written statement identifying the persons to which the farmer supplied qualifying milkfat during the 3

New

seasons concerned, and the amount supplied to each of them in each season.

5 “15J. **Date of notification**—Subject to **section 15k** of this Act, the Secretary shall accept every notification under **section 15i** of this Act received before the 1st day of September (or any later day allowed by the Board for the purpose) in the season following the 3 seasons to which the notification relates.

10 “15K. **Secretary may disregard unconfirmed information**—The Secretary may ask any person to confirm any information relating to the supply of milkfat to the person contained in a notification under **section 15i** or **section 15o (4)** of this Act; and if the person does not confirm the information, the Secretary may treat the notification as if it does not contain
15 the information.

“15L. **Amendment of ownership register**—(1) On the 1st day of September in every year there shall be deemed to have been deleted from the ownership register all information not relating to the most recent complete season or to one of the 2
20 seasons before it; and the Secretary shall, as soon as is practicable, amend the register accordingly.

“2) Subject to **section 15k** of this Act, as soon as is practicable after accepting a notification under **section 15i** of this Act, the Secretary shall record the information it contains in the
25 ownership register.

“3) The Secretary may at any time—

“a) Delete from the ownership register any information the Secretary believes on reasonable grounds to be false:
“b) Amend any information in the ownership register the
30 Secretary believes on reasonable grounds to be inaccurate.

“15M. **Ownership register to be available for inspection**—(1) During normal business hours, the ownership register shall be available, without charge, for inspection and the copying of information recorded in it at the Board’s
35 principal office.

“2) Nothing in **subsection (1)** of this section prevents the Board from—

40 “a) Refusing to supply a copy of the ownership register or any part of it; or

New

“(b) Refusing to allow the use of equipment under the Board’s control for copying the ownership register or any part of it; or	
“(c) Charging a reasonable fee for—	5
“(i) Supplying a copy of the ownership register or any part of it; or	
“(ii) Allowing the use of equipment under the Board’s control for copying the ownership register or any part of it.	10
“15N. Ownership certificates —As soon as is reasonably practicable after the 1st day of September in every year the Secretary shall issue to each qualifying person who then owns a proportion of the Board’s capital an ownership certificate specifying the amount (ascertained, in accordance with section 15G of this Act, by reference to the amount of the Board’s capital at the end of that season) of the Board’s capital owned by the person at the end of the previous season.	15
“15O. Sales, mergers, and acquisitions —(1) If the farm of a qualifying farmer is sold, this Part of this Act shall apply to all qualifying milkfat previously produced from the farm as if it had been produced by the new owner.	20
“(2) If 2 or more qualifying companies merge, this Part of this Act shall apply to all qualifying milkfat of those companies before the merger as if it was qualifying milkfat of the new company resulting from the merger.	25
“(3) Where, pursuant to subsection (1) or subsection (2) of this section, this Part of this Act applies to any qualifying milkfat or own-supply milkfat as if it had been produced by a new owner or was qualifying milkfat of a new owner or new company, the new owner or company may give the Secretary written notice of the quantities of milkfat involved and the seasons in which they were produced; and in that case, subject to section 15K of this Act, the Secretary shall—	30
“(a) Amend the ownership register accordingly; and	35
“(b) Cancel all the ownership certificates relating to the milkfat concerned; and	
“(c) Issue to the new owner or company (and, in the case of the sale of part of a farm, or of one of 2 or more farms owned by the same person, to the vendor) the	40

New

appropriate ownership certificate under **section 15N** of this Act.

5 “15P. **Consequences of dissolution of Board**—(1) If the Board is ever dissolved, no person shall, by virtue only of being or having been a qualifying person, be liable to make any payment towards or in respect of—

“(a) Any liability of the Board; or

10 “(b) Any cost or expense of, or charge or claim made in respect of—

“(i) The dissolution of the Board; or

“(ii) The adjustment among themselves of the rights of qualifying persons.

“(2) If the Board is ever dissolved,—

15 “(a) Subject to **paragraph (b)** of this subsection, all its assets (after the payment of the Board’s debts, the costs and expenses of its dissolution, and the costs and expenses of the distribution) shall be sold, and the proceeds shall be distributed to (or to the successors of) the persons—

20 “(i) Who at the time of dissolution were qualifying persons; and

“(ii) Whose names were then recorded in the ownership register,—

25 in the proportions specified in **section 15G** of this Act; but

“(b) Where before the dissolution the Board has decided that its assets as aforesaid should be dealt with in some other way, they shall be dealt with in the way the Board has most recently decided.

30 “(3) The Board shall not decide that the Board’s assets on dissolution should be dealt with in any particular way unless, within 6 months before doing so, it has obtained in accordance with **section 15c** of this Act the approval to dealing with those assets in that way of registered qualifying persons whose aggregate qualifying milkfat for the most recent complete season was, in the Board’s opinion, more than nine tenths of the aggregate qualifying milkfat of the qualifying milkfat of all qualifying persons for the season.

40 “15Q. **Other enactments not affected**—(1) Nothing in this Part of this Act affects the operation or application of the

New

Companies Act 1955, the Unit Trusts Act 1960, the Inland Revenue Acts (within the meaning of section 2 of the Inland Revenue Department Act 1974), or the Securities Act 1978; and those Acts shall continue to operate and apply as if those sections had not been enacted. 5

“(2) For the purposes of the enactments referred to in subsection (1) of this section,—

“(a) To the extent (if any) that section 15G of this Act creates rights, those rights are not shares, interests in a unit trust, or securities: 10

“(b) No interest under this Part of this Act in the capital of the Board is a share, an interest in a unit trust, or a security.”

6b. Consequential amendments and repeal—(1) Section 2 of the principal Act is hereby consequentially amended by inserting, in their appropriate alphabetical order, the following definitions: 15

“‘Assets’, in relation to the Board, means property of all kinds, both real and personal, of whatever nature and wherever situated; and (without limiting the generality of the foregoing) includes— 20

“(a) Property over which the Board has a power of disposition or appointment; and

“(b) Any copyright, patent, registered design, trademark, knowhow, or other intellectual property owned by the Board; and 25

“(c) Choses in action and money owned by or vested in the Board; and

“(d) The Board’s goodwill; and 30

“(e) Rights, interests, and claims in or to, property, of every kind,—

“(i) Whether or not arising from, accruing under, created or evidenced by, or the subject of, any instrument or other document; and 35

“(ii) Whether liquidated or unliquidated; and

“(iii) Whether actual, contingent, prospective or vested,—

exercisable by or vested in, or capable of being made by, the Board;— 40

New

- but does not include any property held by the Board pursuant to section 45 of this Act for the purpose of any superannuation scheme or schemes:
- 5 “ ‘Occupier’, in relation to any land,—
- “(a) Where a person other than its owner has a right to occupy it by virtue of a lease or tenancy granted for a term of 12 months or more, means that person; and
- 10 “(b) In every other case, means its owner:
- “ ‘Ownership register’ means the register of qualifying persons kept under **section 15F** of this Act:
- “ ‘Qualifying company’ means a co-operative company whose articles of association—
- 15 “(a) Require that on its winding up its net assets are to be distributed to its shareholders in proportion to milk or milk components they supplied during the most recent complete season and some or all of the 4 seasons immediately before it; and
- 20 “(b) Either specify those seasons, or provide that they are to be determined (in a specified manner) by its shareholders:
- “ ‘Qualifying farmer’ means an occupier of land producing milk or cream for supply to a manufacturer who or that is not a qualifying company:
- 25 “ ‘Qualifying milkfat’—
- “(a) In relation to a registered co-operative dairy company, means own-supply milkfat; and
- 30 “(b) In relation to a registered milk marketing co-operative company, means milkfat supplied by the company to, and manufactured into dairy produce by, a manufacturer who or that is not a qualifying company; and
- 35 “(c) In relation to a qualifying farmer, means all milkfat produced by the farmer and manufactured into dairy produce except—
- “(i) Milkfat supplied to a registered milk marketing company that is a qualifying company; and
- 40 “(ii) Milkfat manufactured into dairy produce by a qualifying company:

New

“ ‘Qualifying person’ means a person who or that is a qualifying farmer or a qualifying company:

“ ‘Registered qualifying person’, at any time, means a qualifying person whose name is then on the ownership register: 5

“ ‘Secretary’ means the employee of the Board for the time being directed by the Board to be its secretary for the purposes of this Act; and includes any employee of the Board for the time being directed by the Board to be its acting secretary:” 10

(2) Section 13 of the Dairy Board Amendment Act 1988 is hereby consequentially repealed.

PART II

MARKETING OF DAIRY PRODUCE 15

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: 20

“(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, having had regard to— 25

“(a) The extent to which the markets are in states that do not impose quantitative restrictions on the importation of dairy produce; and

“(b) The extent to which the export of the produce to the markets might result in a direct or indirect reduction of the overall returns to the New Zealand dairy industry; and 30

“(c) Any other relevant guidelines for the time being established by the Board for the purposes of this section and published by the Board,— 35

the Board shall grant or refuse permission.

“(1B) The Board shall give a person it refuses permission written notice of its reasons for doing so.

“(1c) The Board may refuse to decide whether or not to give its permission until the applicant has given the Board all 40

New

information that (in the Board's opinion held on reasonable grounds) it is necessary for the Board to have in order to decide.

5 “(1D) On request by any person, the Board shall, without charge, give the person written notice of the guidelines for the time being in force under **subsection (1A) (c)** of this section.

10 “(1E) Notwithstanding sections 14 (1) (b) and 18 of this Act, without the consent of the owner of the produce concerned, the Board—

 “(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

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

20 (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) to (1E)** of this section, for”.

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

25 **7A. Interim distributions**—The principal Act is hereby amended by inserting, after section 28, the following section:

30 “28A. (1) At any time during a season the Board may assess its trading balance for the season and decide whether or not there is likely to be a surplus at the end of the season if no interim distribution (or further interim distribution) is made, and (if so) how great the surplus is likely to be.

 “(2) If the Board expects there to be a surplus, it may make to manufacturers an interim distribution of amounts not greater in total than the expected amount of the surplus.

35 “(3) In determining whether or not to make an interim distribution, the Board shall take into account—

 “(a) The matters specified in sections 26 (9) (b), 26 (9) (c), and 28 (3) (b) of this Act; and

 “(b) Any other matters the Board thinks fit.

New

“(4) Every interim distribution shall be made in accordance with section 28 (4) of this Act as if the amounts distributed are a surplus.”

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. 5

(2) Subsections (3) to (5) of section 5 of the Dairy Board Amendment Act 1988 are hereby consequentially repealed. 10

PART III

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 (1) of the principal Act is hereby amended by omitting the words “, not exceeding in any case the maximum charges that may be prescribed by regulations under this Act”. 20

(2) Section 41 of the principal Act is hereby amended by adding the following subsection:

“(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 **section 10** of the Dairy Board Amendment Act 1990) shall continue in force from season to season until the Board revokes, amends, or replaces it.” 25

(3) Section 69 (2) (a) of the principal Act is hereby consequentially repealed. 30

(4) The Dairy Produce Levy Regulations 1984 are hereby consequentially revoked.

10A. Superannuation schemes—(1) The principal Act is hereby amended by repealing section 45 (as from time to time amended), and substituting the following section: 35

“45. (1) The Board is hereby authorised to promote, establish, maintain, and vary schemes for the purpose of

New

providing payment, by the Board or by any other corporate body, of superannuation or retiring allowances for—

5 “(a) Employees, or employees of any class or classes, of companies owning or occupying dairy factories; or

“(b) Employees, or employees of any class or classes, of the Board or of any subsidiary of the Board.

10 “(2) No money payable to any person under a scheme under subsection (1) of this section shall in any way be assigned or charged, or pass to any other person by operation of law.

“(3) No money payable to any person under a scheme under subsection (1) of this section on the death of a contributor shall be assets for the payment of the person’s debts and liabilities.

“(4) The Board may invest or reinvest—

15 “(a) Any money received by the Board under this section; and

“(b) Any money held in the Dairy Industry Superannuation Account,—

20 in any investment authorised by regulations made under the Superannuation Schemes Act 1976 for trustees of approved schemes for employees within the meaning of that Act.”

(2) Section 69 (2) (b) of the principal Act is hereby revoked.

(3) The following enactments are hereby consequentially repealed:

25 (a) Section 8 of the Dairy Board Amendment Act 1965:

(b) Section 9 (b) of the Dairy Board Amendment Act 1972:

(c) Section 11 (1) of the Dairy Board Amendment Act 1975:

(d) The Dairy Board Amendment Act 1977:

30 (e) So much of the Sixth Schedule to the National Provident Fund Restructuring Act 1990 as relates to the principal Act.

10b. Board to prepare financial statements—Section 66 of the principal Act (as substituted by section 12 of the Dairy Board Amendment Act 1988) is hereby amended by adding the following paragraph:

35 “(e) In respect of every subsidiary (within the meaning of section 158 of the Companies Act 1955) of the Board, statements of the kind that holding companies are required by section 156 of that Act to prepare in respect of subsidiaries.”

40

New

10c. Annual report and statements to be laid before House of Representatives—Section 67A (1) of the principal Act (as substituted by section 12 of the Dairy Board Amendment Act 1988) is hereby amended by inserting, before the word “together”, the words “(including a report on the exercise of its statutory powers)”. 5

PART IV

MISCELLANEOUS PROVISIONS

11. New sections substituted—(1) The principal Act is hereby amended by repealing section 67 (as substituted by section 12 of the Dairy Board Amendment Act 1988), and substituting the following section: 10

“**67. Statements to be audited**—(1) Subject to subsection (2) of this section,— 15

“(a) The statements referred to in section 66 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

“(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). 20

“(2) Where, at the end of the period to which any statement referred to in section 66 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. 25

“(3) For the purposes of the audit of any statement referred to in section 66 of this Act, an auditor appointed under this section has, and may exercise and perform, all the functions, duties, and powers, of an auditor under the Companies Act 1955.” 30

(2) Section 67A of the principal Act (as substituted as aforesaid) is hereby consequentially amended by omitting the words “Audit Office”, wherever they occur, and substituting in each case the word “auditor”. 35

12. Performance and efficiency audits—The principal Act is hereby amended by inserting, after section 67A (as

New

substituted by section 12 of the Dairy Board Amendment Act 1988), the following section:

5 “67B. (1) From time to time there shall be carried out, in accordance with this section, an audit of how effectively and efficiently the Board is performing in terms of the policies, procedures, and strategies of the Board and its operating companies.

“2) While an audit shall relate to—

10 “(a) The Board’s performance as at a particular day; and

“(b) The Board’s prospective future performance,—
the person carrying it out may have regard to its performance during the 5 years before that day.

15 “3) At least 4 months before the day as at which an audit is to be conducted, the Board shall consult the Minister as to the terms of reference for the audit.

“4) No more than one month after the consultation the Minister shall give the Board written notice of the Minister’s views on the terms of reference for the audit.

20 “5) Subject to **subsection (6)** of this section the terms of reference for an audit shall be determined by the Board.

“6) The Board—

“a) Shall not determine terms of reference for an audit without the approval of the dairy industry; and

25 “(b) Shall not seek the approval of the dairy industry of proposed terms of reference for an audit before making known to the industry the views expressed by the Minister under **subsection (4)** of this section.

“7) Notwithstanding **subsection (5)** of this section, where—

30 “(a) The Board has failed to comply with **subsection (3)** of this section in relation to any audit; or

“b) The Board has failed to gain the approval of the dairy industry to any proposed terms of reference for an audit,—

35 the terms of reference for the audit shall be prescribed by the Governor-General by Order in Council, made on the recommendation of the Minister.

40 “8) The Minister shall not recommend the making of an Order in Council under **subsection (7)** of this section without consulting the Board.

“9) Subject to **subsections (10) and (11)** of this section every audit shall be carried out by a person appointed by the Board,

New

at least one month before the day as at which it is to be carried out, after consultation with the Minister.

“(10) Where the Board—

“(a) Has failed or refused to consult the Minister before 5
purporting to appoint a person to carry out an audit;
or

“(b) Has not appointed a person to carry out an audit at least
one month before the day as at which it is to be
carried out,— 10

the audit shall be carried out by a person appointed by the Minister after consultation with the Board.

“(11) The Board shall not appoint a person to carry out an audit without the consent of the dairy industry.

“(12) The Board’s performance and efficiency includes— 15

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

“(b) Any such objectives established; and

“(c) The extent (if any) to which the Board achieved any such objectives established; and 20

“(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

“(e) Any such policies and strategies put in place; and 25

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

but the fact that any other matter is agreed or specified under **subsection (3)** of this section is conclusive evidence that it relates to the performance and efficiency of the Board. 30

“(13) Every person who carries out an audit 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.

“(14) If asked by a co-operative company or a supplying shareholder to do so, the Board shall, without charge, give the company or shareholder a written summary of the conclusions and recommendations contained in any report a copy of which has been given to the Board under **subsection (13)** of this section. 35

“(15) The Board shall pay the reasonable costs of every audit; and the person carrying it out may recover those costs accordingly as a debt due to the person. 40

New

“(16) The reasonable costs of an audit are—

5 “(a) The remuneration agreed on the appointment by the Board (or, as the case may be, by the Minister) of the person carrying it out to be paid to the person for carrying it out and reporting to the Minister and the Board; and

“(b) The person’s reasonable costs in doing so.

10 “(17) The Official Information Act 1982 does not apply to any report prepared under **subsection (13)** of this Act.

“(18) The first audit shall be carried out as soon as may be after the 1st day of June 1993; and shall relate to the Board’s performance as at that day.

“(19) Other audits shall be carried as soon as may be after—

15 “(a) The 1st day of June in the year 5 years after the day as at which the most recent audit was carried out; or

“(b) Any earlier 1st day of June fixed by the Board before that earlier 1st day of June;—

and shall relate to the Board’s performance as at that day.”

20 [Note: There is no new clause corresponding to clause 13 as introduced.]

14. Amendments to Higher Salaries Commission Act

25 **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
30 Wool Board.