

TOBACCO GROWING INDUSTRY AMENDMENT BILL

EXPLANATORY NOTE

This Bill makes amendments to the Tobacco Growing Industry Act 1974 principally for the purpose of enabling the Tobacco Board to arrange for the financing of the purchase and storage of domestic tobacco leaf by the manufacturers of tobacco. This Bill authorises the arrangements and transactions entered into between the Tobacco Board and the manufacturing companies (involving the acquisition and sale of tobacco) with respect to the domestic crop for the 1975-76 season.

Clause 1 relates to the Short Title.

Clause 2 corrects an error in the description of the Tobacco Research Committee in section 2 of the principal Act.

Clause 3 effects changes to section 10 of the principal Act which is concerned with the functions and powers of the Board.

Subclauses (1), (2), and (4): The Board is granted the new function of acquiring and marketing tobacco grown in New Zealand where necessary in the interests of the tobacco growing industry in New Zealand. Tobacco is defined as processed and redried tobacco prepared for manufacture (but does not include manufactured tobacco).

Subclause (3): Consequent upon the granting of the new function the Board is empowered to exercise powers—

- (a) For the acquiring and marketing by the Board of tobacco:
- (b) For the handling, pooling, transport, and storage of tobacco:
- (c) For the insurance against loss of any raw tobacco for the time being the property of the Board:
- (d) For the establishment of a fund for the purpose of meeting losses or damage to tobacco acquired by the Board.

Subclause (5) empowers the Board to prescribe forms of applications and other forms. It will also be empowered to prescribe appropriate fees relating to these forms and the granting of licences subject to the consent of the Minister of Trade and Industry. The form of the licence will however continue to be prescribed by regulations.

Subclause (6) makes a consequential amendment.

Clause 4 amends the principal Act by inserting a new section enabling the Tobacco Quota Committee to require a grower to supply certain information to the Committee for the purpose of determining a grower's basic quota or adjusted quota. The information thus obtained will be subject to a secrecy requirement.

Clause 5 makes two changes to section 21 of the principal Act relating to levies. The changes are—

- (a) The specification of a maximum grower's levy of 3.5 cents per kg green-weight leaf is omitted. The Board is to be empowered to determine the appropriate rate of levy, with the approval of the Minister, by notice in the *Gazette*;
- (b) The methods of collection of the grower's levy, the manufacturer's levy, and any additional levy imposed on members of the Tobacco Growers' Federation Incorporated will now be at the discretion of the Board and not by regulation.

Clause 6 substitutes new financial provisions consequent upon the new functions of the Board. The main features of the new provisions are as follows:

- (a) A new Tobacco Growing Industry Account will be established. The account may be divided into separate imprest or subsidiary accounts. The present funds of the Board will be payable into the account. The new section 22 contains provisions substantially similar to section 23 of the present Act;
- (b) The Board is empowered to establish a special account for funds for any special purpose or as a reserve (new section 23);
- (c) The funds of the Board available for investment may be invested in the manner prescribed in the new section 23 (4);
- (d) The new section 23A is concerned with the application of money received by the Board. The application of funds was formerly dealt with in section 22 but the new section encompasses the additional items of expenditure arising from the increased functions and powers of the Board;
- (e) The borrowing powers of the Board in the new section 23B of the Act are largely unchanged but a new subsection is inserted enabling the Minister of Finance to give in respect of any advance made to the Board a guarantee, indemnity, or security. The new section also provides that if the repayment of any borrowed money is guaranteed by that Minister the loan shall be subject to such terms and conditions as he thinks fit;
- (f) The new section 23C re-enacts section 22 (2) of the principal Act with the modification that unauthorised expenditure in excess of \$500 may be authorised in any year by the Minister of Finance;
- (g) The new section 23D exempts the Board from the payment of land tax and income tax in common with statutory Boards with similar functions;
- (h) Sections 27 and 28 of the Act which relate to the accounts and annual report of the Board are modified to take into account the new "trading" operations of the Board.

Clause 7 inserts into the principal Act, statutory criteria upon which licences and basic quotas are to be granted or determined.

Clause 8 re-enacts, with amendments, section 45 which relates to the classification of tobacco leaf. The new section gives the Board greater control over the classification of tobacco leaf. The Board may now prescribe rules relating to the manner in which the Schedule of Standard Grades is to be applied and to the duties of classifiers approved by the Minister.

Clause 9 makes an amendment to section 47 to make it clear that the section does not apply in relation to purchases by manufacturers from the Board in terms of the financing scheme.

Clause 10 validates acts done and arrangements already made which would have been valid if done or made after the Bill is enacted.

Hon. Mr Adams-Schneider

TOBACCO GROWING INDUSTRY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Tobacco Growing Industry Act 1974

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Tobacco Growing Industry Amendment Act 1976, and shall be read together with and deemed part of the Tobacco Growing Industry Act 1974* (hereinafter referred to as the principal
10 Act).

*1974, No. 50

No. 111—1

2. Definition of Tobacco Research Committee—Section 2 of the principal Act is hereby amended by repealing the definition of the term “Tobacco Research Council”, and substituting the following definition:

“‘Tobacco Research Committee’ means the Tobacco Research Committee established pursuant to section 9 of the Scientific and Industrial Research Act 1974:”.

3. Functions of Board—(1) Section 10 (1) of the principal Act is hereby amended by omitting from paragraph (d) the word “industry”, and substituting the words “industry; and”.

(2) Section 10 (1) of the principal Act is hereby further amended by adding, after paragraph (d) (as amended by subsection (1) of this section), the following paragraph:

“(e) To acquire and market tobacco grown in New Zealand where it is necessary in the interests of the tobacco growing industry of New Zealand.”

(3) Section 10 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsections:

“(1A) The Board shall have all such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions under subsection (1) (e) of this section and, without limiting the generality of the foregoing, the Board shall have full authority to make and carry out such arrangements and give such directions, notwithstanding anything in this Act, as it thinks fit—

“(a) For the acquiring and marketing by the Board of tobacco:

“(b) For the handling, pooling, transport, and storage of tobacco:

“(c) For the insurance against loss of any tobacco for the time being the property of the Board:

“(d) For the establishment of a fund for the purpose of meeting any loss or damage to tobacco acquired by the Board and for the taking of such other steps as the Board thinks fit for that purpose.

“(1B) In subsection (1A) of this section the expression ‘tobacco’ means tobacco leaf and stems (not being manufactured tobacco) which has been processed and redried in preparation for manufacture.”

(4) Section 10 (2) of the principal Act is hereby amended by inserting, after the words "of its functions", the words "(other than under subsection (1) (e) of this section)".

5 (5) Section 10 of the principal Act is hereby further amended by adding, after subsection (2), the following subsection:

10 "(3) The Board may from time to time prescribe forms of applications and such other forms (other than the forms of a licence) as may be required for the purposes of this Act and may also, with the consent of the Minister, prescribe the fees to be paid to the Board in respect of such applications and in respect of the granting of licences thereunder."

(6) Section 52 of the principal Act is hereby consequentially amended by repealing paragraphs (a) and (b), and substituting the following paragraph:

15 "(a) Prescribing the form of a licence granted under section 32 of this Act."

4. Information to be supplied to Committee—The principal Act is hereby further amended by inserting, after section 15, the following section:

20 "15A. The Committee may require a grower to supply to the Committee such of the information prescribed in section 11 (4) of this Act and such other information as is necessary to enable the Committee to determine the grower's basic quota or adjusted quota:

25 "Provided that every member of the Committee shall maintain and aid in the secrecy of any such information so supplied to him."

5. Levy on tobacco leaf used in manufacture—(1) Section 21 of the principal Act is hereby amended by omitting the words "may from time to time be fixed by the Board, not exceeding in any case a levy of 3.5 cents per kilogram green-weight", and substituting the words "the Board, with the approval of the Minister, may from time to time determine by notice in the *Gazette*".

35 (2) Section 21 of the principal Act is hereby amended by adding, after subsection (4), the following subsection:

40 "(5) The Board shall from time to time prescribe the methods to be adopted in the collection of the levies that may be imposed on tobacco under subsection (1) and subsection

(2) of this section and in the collection of any additional levy which the Board has resolved to collect under subsection (4) of this section on behalf of the New Zealand Tobacco Growers' Federation Incorporated."

(3) Section 52 of the principal Act is hereby consequentially amended by repealing paragraph (f). 5

6. New financial provisions substituted—(1) The principal Act is hereby amended by repealing sections 22 and 23, and substituting the following sections:

"22. The Tobacco Growing Industry Account—(1) For the purposes of this Act there shall be established at any bank approved in that behalf by the Minister of Finance an account to be known as the Tobacco Growing Industry Account. 10

"(2) The Board may from time to time open at any branch or agency of the bank in which is kept the Tobacco Growing Industry Account or, with the consent of the Minister of Finance, of any other bank, such imprest or subsidiary accounts as it deems necessary or desirable in the exercise of its functions or powers. 15

"(3) Every account under this section shall be operated on only by cheque or other instrument (not being a promissory note or bill) by such person or persons as the Board appoints from time to time for that purpose: 20

"Provided that no such cheque or instrument shall be signed by one person only except with the prior consent of the Audit Office and subject to such conditions as the Audit Office thinks fit to impose. 25

"(4) Every payment of money from any account by the Board shall be authorised by a prior resolution of the Board or shall be submitted to the Board for authorisation at its next ordinary meeting. 30

"(5) The Board shall from time to time by resolution fix the amount that may be held at any time in any imprest or subsidiary account, not exceeding \$200 in any case where the account may be operated on by one person acting alone, and not exceeding such amount as the Audit Office may approve in any other case. 35

"23. Special funds and reserves—(1) With the consent of the Minister of Finance, the Board may from time to time out of its funds set aside in a separate bank account any money to form a fund or funds for any special purpose or as a reserve. 40

“(2) The Board may from time to time apply the money so set aside to form any such fund only for the purpose for which the fund was established, and may invest in the manner specified in subsection (3) of this section any money so set
5 aside and pay the proceeds of the investment into the fund.

“(3) The Board may invest any part of any such fund or any other money available for investment in the following manner:

“(a) In New Zealand Government Securities:

10 “(b) On deposit with any bank for the time being approved by the Minister of Finance:

“(c) In any manner, or in any securities, that may from time to time be authorised in that behalf by the Minister of Finance.

15 “23A. **Money payable into and out of Tobacco Growing Industry Account**—(1) There shall be paid into the Tobacco Growing Industry Account all money which, at the commencement of this section, forms part of the funds of the Tobacco Board.

20 “(2) There shall from time to time be payable into the Tobacco Growing Industry Account all money derived from the operations of the Board and any other money that may lawfully be payable to the Account.

25 “(3) There may from time to time be payable out of the Tobacco Growing Industry Account all money payable by the Board, and all costs, charges, commission, and expenses whatsoever incurred by the Board or the Tribunal or for which the Board or the Tribunal may become liable, in the exercise of their functions and powers.

30 “23B. **Borrowing powers and advances to Board**—(1) The Board may from time to time, with the prior consent in writing of the Minister of Finance, borrow money from any person and may mortgage, charge, or pledge any right, title, estate, or interest in any of its property, for the purpose of
35 securing the repayment of that money:

“Provided that, if the repayment of any amount borrowed by the Board is guaranteed by the Minister of Finance under subsection (2) of this section, the loan shall be subject to such terms and conditions as the Minister of Finance thinks fit.

40 “(2) The Minister of Finance may from time to time, on behalf of the Crown, give in respect of any advance made to the Board by any person any guarantee, indemnity, or security on or subject to such terms and conditions as the Minister thinks fit.

“(3) The Minister of Finance may from time to time, on behalf of the Crown, enter into agreements with the Board for the purpose of giving full effect to the provisions of this section.

“23c. **Unauthorised expenditure**—The Board may, for purposes not authorised by this Act or law for the time being in force, expend in any year any sum or sums not amounting in the aggregate to more than \$500 or such additional amount authorised in that behalf in respect of any year by the Minister of Finance.

“23d. **Exemption from taxation**—(1) The Board shall be exempt from the payment of land tax and income tax.”

(2) Section 25 of the principal Act is hereby consequentially repealed.

(3) Section 27 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The Board shall, as soon as practicable after the end of each financial year ending with the 30th day of September, cause the accounts of the Board for the financial year to be balanced and prepare a balance sheet of the Board at the end of the financial year, together with revenue or any other accounts showing the financial transactions for that year and a statement of source and application of funds.”

(4) Section 28 of the principal Act is hereby consequentially amended—

(a) By inserting, after the word “accounts” wherever it appears in subsection (1) and subsection (2), in each case the words “and balance sheet”:

(b) By inserting in subsection (1), after the words “for that year”, the words “and the report of the Audit Office thereon”.

7. Criteria upon which licences, transfer of licences, and basic quotas are to be granted or determined—(1) The principal Act is hereby further amended by inserting, after section 33, the following sections:

“33A. **Criteria upon which licences are granted and transfers of licences approved**—(1) In considering any application for a licence or an application for an amendment to a licence under section 32 of this Act, or any application for the transfer of a licence under section 33 of this Act, the Committee shall have regard to—

- “(a) The ability of the applicant or, as the case may require, the transferee to conduct the growing of tobacco leaf in an efficient and businesslike manner; and
- 5 “(b) The standard and suitability of the facilities, equipment, and premises to be used in the carrying on the business of tobacco leaf growing; and
- 10 “(c) The need to promote the growing of tobacco leaf of sufficient quality and the capacity of the applicant or, as the case may require, the transferee to produce leaf of such a quality in relation to the nature of the land in respect of which the application is made and any other relevant factors; and
- 15 “(d) The quantities and grades of tobacco proposed to be grown in relation to the domestic or, if applicable, overseas demand for that quantity or grade of leaf and the production or productive capacity of existing licensees; and
- 20 “(e) The orderly development of the tobacco growing industry in New Zealand; and
- “ (f) The ability of the applicant or transferee to fulfil any obligation imposed on him under this Act or any condition attached to any licence granted under this Act or under any regulations made there-
- 25 under; and

“(g) Any other prescribed criteria.

“(2) Nothing in this section shall limit section 32 (2) or section 33 (3) of this Act.

30 “33B. **Criteria upon which the initial basic quota applicable to any land is to be determined**—In determining the initial basic quota of tobacco leaf applicable to any land for the purpose of section 32 of this Act, the Committee shall have regard to—

- 35 “(a) The relative potential capacity of the land for growing tobacco; and
- “ (b) The average production of tobacco leaf of the district in which the land is situated; and
- “ (c) The previous use of the land; and
- 40 “ (d) The known ability and experience of the grower in growing tobacco leaf.”

(2) Section 52 of the principal Act is hereby consequentially amended by omitting from paragraph (c) and paragraph (d) the words “the criteria”, and substituting in each case the words “additional criteria”.

8. Classification of tobacco leaf—The principal Act is hereby further amended by repealing section 45, and substituting the following section:

“45. (1) Prior to the purchase of any tobacco leaf by any manufacturer, or by the representative of any manufacturer, or by any other person the leaf shall be classified in the manner prescribed under subsection (2) of this section. 5

“(2) Tobacco leaf shall be classified by an approved classifier in accordance with the Schedule of Standard Grades and any rules for the time being prescribed by the Board relating to the manner in which the Schedule is to be applied and the duties of approved classifiers. 10

“(3) In this section the term ‘approved classifier’ means a person appointed, on the advice of the Board, by the Minister from time to time, being an appointment made for such period as the Minister may specify in the notice of appointment.” 15

9. Payment for quota leaf under sales between manufacturer and grower—(1) Section 47 of the principal Act is hereby amended by inserting, before the words “A manufacturer”, the expression “(1)”. 20

(2) Section 47 of the principal Act is hereby further amended by adding, as subsection (2), the following subsection:

“(2) Nothing in this section shall apply with respect to purchases by any manufacturer from the Board.” 25

10. Validation—Every act done and every agreement and arrangement made by the Minister of Finance or the Minister of Trade and Industry or the Board or any member thereof before the commencement of this Act which if it were done or made after the commencement of this Act would have been lawful and effectual is hereby declared to have been validly done or made, and always to have been validly done or made. 30