



**THE APPLE AND PEAR MARKETING (ANNUAL GENERAL MEETING) REGULATIONS 1994**

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CATHERINE A. TIZARD, Governor-General

**ORDER IN COUNCIL**

At Wellington this 12th day of September 1994

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 47 of the Apple and Pear Marketing Act 1971, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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ANALYSIS

1. Title and commencement
2. Interpretation
3. People who may attend
4. People who may vote
5. Weighting
6. Transfer of voting entitlement

7. Regard to be had to earlier season where crop affected by adverse climatic event
  8. Preliminary procedures
  9. Matters to be considered at Meetings
  10. Matters on which resolutions may be passed
  11. Submission of resolutions
  12. Time for consideration of resolutions
  13. Notices, etc.
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## REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Apple and Pear Marketing (Annual General Meeting) Regulations 1994.

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“The Board’s activities” includes marketing, price setting, and disposition of seasonal profit:

“Chairperson”, in relation to a Meeting at any time, means the person then presiding at the Meeting:

“Fruit” means apples or pears:

“Grower body” means any of the following:

(a) A partnership carrying on business as a grower:

(b) An unincorporated body of 2 or more people together carrying on business as a grower:

(c) Trustees together carrying on business as a grower:

(d) A body corporate carrying on business as a grower;—

and, in relation to a grower body representative, means the partnership, unincorporated body, trustees, or body corporate of which the representative is a partner, member, beneficiary, settlor, trustee, employee, or officer:

“Grower body agent”, in relation to a Meeting, means a person who for the time being—

(a) In the chairperson’s opinion, is authorised in writing by a qualifying grower body to exercise that body’s vote on that body’s behalf at the Meeting or all Meetings; and

(b) Is—

(i) A qualifying individual grower; or

(ii) A grower body representative of that body; or

(iii) A grower body agent of some other qualifying grower body;—

and, in relation to any qualifying grower body, means the grower body agent of that body:

“Grower body representative”, in relation to a grower body at any time,—

(a) In the case of a grower body that is a partnership, means any person who is then a partner in the partnership:

(b) In the case of a grower body that is an unincorporated body of 2 or more people, means any person who is then 1 of those people:

(c) In the case of a grower body that is a trust, means any person who is then a beneficiary, settlor, trustee, or employee, of the trust:

(d) In the case of a grower body that is a body corporate, means any person who is then an officer or employee of the body corporate:

“Individual grower” means a natural person carrying on business as a grower alone:

“Meeting” means an annual general meeting required to be held by section 38c (1) of the principal Act:

“The principal Act” means the Apple and Pear Marketing Act 1971:

“Proxy”, in relation to a Meeting, means a person who for the time being—

(a) In the chairperson’s opinion, is authorised in writing by a qualifying individual grower to exercise that grower’s vote on that grower’s behalf at the Meeting or all Meetings; and

(b) Is a qualifying individual grower or the grower body agent of a qualifying grower body;—

and, in relation to any qualifying individual grower, means a person authorised to exercise that grower’s vote as a proxy:

“Qualifying”, in relation to a grower and a Meeting held in any season, means who or that—

(a) Was the grower of fruit supplied to the Board during the season before; and

(b) Either—

(i) In the Board’s opinion, will supply fruit to the Board during that season; or

(ii) Was the grower of fruit supplied to the Board during that season and, in the Board’s opinion, will supply fruit to the Board during the following season.

“Supplied to the Board”, in relation to a grower, means acquired from the grower by the Board under section 18a (4) of the principal Act; and “supply to the Board” has a corresponding meaning:

“Tray-carton equivalent”, in relation to any quantity of fruit supplied to the Board at any time, means the number of tray-cartons (of the size and shape then standard for export quality fruit supplied to the Board) that the quantity of fruit would then have filled.

**3. People who may attend**—(1) In any season, the following people are entitled to attend a Meeting:

(a) Every individual grower who has supplied or, in the chairperson’s opinion, will supply fruit to the Board in the season in which the Meeting is held:

(b) Every grower body representative of a grower body that has supplied or, in the chairperson’s opinion, will supply fruit to the Board in the season in which the Meeting is held:

(c) People of a kind or description authorised by the Board by resolution to attend that Meeting or all Meetings:

(d) Particular people authorised by the Board by resolution to attend that Meeting.

(2) People not entitled to attend a Meeting may be excluded from it at any time other than when—

(a) The chairperson is under regulation 8 (2) of these regulations presenting an oral report on a matter specified in paragraph (a) or paragraph (b) of regulation 9 of these regulations; or

(b) Such a matter is under consideration.

**4. People who may vote**—(1) Only the following people are entitled to vote at a Meeting:

(a) Qualifying individual growers (whether voting in that capacity only, or also as the proxy or grower body agent of some other qualifying individual grower or qualifying grower body); or

(b) Grower body agents of qualifying grower bodies (whether voting in that capacity only, or also as the proxy or grower body agent of

some other qualifying individual grower or qualifying grower body).

(2) A person who votes in more than 1 capacity shall cast a separate vote in each capacity; and regulation 5 of these regulations shall apply to each vote separately.

(3) Except as provided in subclause (2) of this regulation (but subject to regulation 5 of these regulations), every person who is entitled to vote on any matter before a Meeting shall be entitled to cast only 1 vote on the matter.

**5. Weighting**—The vote of a person voting in a poll on any matter before a Meeting in any season shall be weighted by adding to it 1 additional vote for every 5,000 tray-carton equivalents (or part thereof) of fruit in excess of 4,999 tray-carton equivalents in the chairperson's opinion supplied to the Board during the season before by the person or (as the case may be) the grower whose grower body agent or proxy the person is.

**6. Transfer of voting entitlement**—If the chairperson at a Meeting held in any season is satisfied that a qualifying grower—

- (a) Has transferred effective control of all or any part of the grower's orchard to any other person; and
  - (b) At least 14 days before the Meeting notified the Board in writing of the transfer and the name and address of the transferee, and the quantity of fruit grown in that orchard or part that was supplied to the Board by the grower in the season before; and
  - (c) Has authorised the transferee in writing to exercise the grower's voting entitlement in respect of that fruit,—
- regulations 4 and 5 of these regulations shall have effect as if—
- (d) The transferee supplied that quantity of fruit to the Board in the season before (in addition to any quantity in fact supplied by the transferee); and
  - (e) The quantity of fruit supplied to the Board by the grower in the season before was correspondingly reduced.

**7. Regard to be had to earlier season where crop affected by adverse climatic event**—If, after considering—

- (a) A statutory declaration from any grower or any grower body representative of a grower that is a grower body (submitted to the Board at least 14 days before the Meeting concerned) as to the nature and effect of any frost, hail, storm, or wind on the quantity of fruit grown by the grower (in fact, and not by virtue of regulation 6 of these regulations) in any orchard that was available for supply to the Board in any season; and
  - (b) Any other evidence or argument submitted to it by or on behalf of the grower with the declaration; and
  - (c) Any other evidence the Board thinks relevant,—
- the Board is satisfied that the quantity was reduced from what it would otherwise have been by the frost, hail, storm, or wind, it may (at its sole discretion) decide that the eligibility to vote of that grower (or, as the case requires, any person deriving eligibility to vote from that grower under regulation 6 of these regulations), and the weighting applied to grower's votes on any matter, at any Meeting held in the next season should be ascertained by reference to some earlier season specified by the Board; and

in that case, regulations 4 and 5 of these regulations shall have effect in relation to the grower's votes at such a Meeting as if the grower had supplied to the Board in the season concerned the quantity of fruit grown in the orchard, and supplied to the Board, in the earlier season.

**8. Preliminary procedures**—(1) Every Meeting shall commence with the distribution to people entitled to attend it of a report, written by or on behalf of the Board, on actions taken by the Board in respect of every resolution passed at the most recent Meeting.

(2) The consideration by a Meeting of any matter specified in any of paragraphs (a), (b), (c), (d), (e), (f), or (i) of regulation 9 of these regulations shall commence with the presentation by the chairperson on behalf of the Board of an oral report on the matter.

(3) The chairperson shall take all practicable steps to ensure that consideration by a Meeting under regulation 9 (g) of these regulations of the activities of a subsidiary of the Board is preceded by an oral report, presented by the principal director of the subsidiary or some other suitable representative, on those activities.

(4) Any report required by subclause (3) of this regulation may be presented by 1 person; or different people may report on different aspects of the matter concerned.

**9. Matters to be considered at Meetings**—In addition to the matters required to be considered by paragraphs (b) and (c) of section 38c (2) of the principal Act, the following matters shall be considered at every Meeting:

- (a) The Board's most recent annual report:
- (b) The most recently audited financial statements of the Board, and the auditor's report on them:
- (c) The Board's activities in the most recently completed season:
- (d) The Board's activities and proposed activities in, and expectations for, the current season:
- (e) The consultations (being consultations required by the principal Act) between the Board and Fruitgrower's Federation in the most recently completed season:
- (f) Any investment or disinvestment by the Board in any body corporate in the most recently completed season:
- (g) The activities in the most recently completed season of those subsidiaries (within the meaning of section 5 of the Companies Act 1993) of the Board that, in the Board's opinion, traded actively during that season:
- (h) The rate or level of the fees proposed to be paid to the Board's auditors in relation to the next audit of the Board's accounts and financial statements:
- (i) The aggregate fees and aggregate allowances paid to the directors of the Board and their deputies in the most recently completed season, and the aggregate fees proposed to be paid to the directors of the Board and their deputies in the current season:
- (j) The minutes of the most recently held Meeting:
- (k) Actions taken by the Board in respect of resolutions passed at earlier Meetings, and any reports from the Board on any such actions.

**10. Matters on which resolutions may be passed**—Subject to regulation 11 (6) of these regulations, there may be passed at a Meeting resolutions relating to—

- (a) Any of the matters referred to in paragraphs (b) and (c) of section 38c (2) of the principal Act;
- (b) Any of the matters specified in regulation 9 of these regulations;
- (c) The Board's activities, objectives, strategies, or proposed activities, objectives, or strategies;
- (d) Any other matters the chairperson thinks appropriate.

**11. Submission of resolutions**—(1) Resolutions proposed to be passed by a Meeting shall be submitted—

- (a) To the Board before the Meeting; or
  - (b) To the chairperson during the Meeting,—
- by a person entitled to vote at the meeting.

(2) Subject to subclauses (3) and (4) of this regulation,—

- (a) Voting on a resolution shall be by poll, voice, or show of hands, as the chairperson thinks fit; and
  - (b) The chairperson shall determine whether a resolution voted on by voice or show of hands has been adopted or rejected.
- (3) Where, before a vote on a resolution is taken by voice or show of hands, or when the result of a vote on a resolution taken by voice or show of hands is announced, at a Meeting held in any season—
- (a) Five or more people entitled to vote on it; or
  - (b) One or more people—

- (i) Who are entitled to cast votes on it (whether in 1 or several capacities); and

- (ii) Whose total votes (in that person or those people's various capacities), when weighted in accordance with regulation 5 of these regulations, are not less than 10 percent of the total votes that a grower who had supplied to the Board in the season before the quantity of fruit supplied to the Board in that season (augmented, as the case requires, to take account of decisions made under regulation 7 of these regulations) would have,—

may require the resolution to be voted on by poll; and in that case it shall be voted on by poll.

(4) When the result of a vote on a resolution taken by voice or show of hands is announced, the chairperson may require the resolution to be voted on again by poll; and in that case it shall be voted on again by poll.

(5) A resolution voted on by poll—

- (a) Shall be deemed to have been adopted if more votes are cast for it than are cast against it; and
- (b) Shall be deemed to have been rejected if no more votes are cast for it than are cast against it.

(6) The chairperson may refuse to put any proposed resolution to a Meeting if—

- (a) No person entitled to vote at the meeting has seconded it; or
- (b) The chairperson considers it defamatory, frivolous, or vexatious; or
- (c) The chairperson considers that there is not enough time to debate and vote on it.

**12. Time for consideration of resolutions**—At any meeting the chairperson shall make reasonable efforts to ensure that there is set aside enough time to consider and vote on all resolutions (other than those considered defamatory, frivolous, or vexatious) submitted or likely to be submitted.

**13. Notices, etc.**—(1) The Board shall take all reasonably practicable steps to ensure that, at least 28 days before any Meeting in any season, written notice is given to—

- (a) Every grower who or that supplied fruit to the Board in the season before; and
  - (b) Every grower who or that has already supplied fruit to the Board in that season; and
  - (c) Every grower who or that, in the Board's opinion, will supply fruit to the Board later in that season; and
  - (c) Every person of a kind or description authorised by the Board by resolution to attend that Meeting or all Meetings; and
  - (d) Every particular person authorised by the Board by resolution to attend that Meeting,—
- of the matters specified in subclause (2) of this regulation.

(2) The matters required by subclause (1) of this regulation to be notified in relation to a Meeting are—

- (a) The time, date, and place of the Meeting; and
  - (b) Who are entitled under these regulations to attend the Meeting; and
  - (c) Who are entitled under these regulations to be appointed grower body agents and proxies; and
  - (d) The rights of growers under regulations 6 and 7 of these regulations; and
  - (e) The matters to be considered at the Meeting; and
  - (f) How resolutions may be submitted.
- (3) A notice sent to a qualifying grower shall also give the grower notice of—

- (a) The quantity of fruit recorded by the Board as having been supplied to it by the grower in the season before (or in the case of a grower in respect of whom or which the Board has already taken action under regulation 7 of these regulations, in the appropriate earlier season); and
- (b) The weighting that would be applied to the grower's vote by virtue of the supply of that fruit; and
- (c) The ability of a grower who believes that the quantity of fruit specified is inaccurate, and wishes the Board to specify another, to ask the Board to do so, and supply any supporting evidence or argument, no later than 14 days before the Meeting.

MARIE SHROFF,  
Clerk of the Executive Council.

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## EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force 28 days after notification in the *Gazette*, provide for the holding of annual general meetings by the New Zealand Apple and Pear Marketing Board.

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

Date of notification in *Gazette*: 15 September 1994.

These regulations are administered in the Ministry of Agriculture and Fisheries.