



ANALYSIS

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1993, No. 153

An Act to amend the Apple and Pear Marketing Act 1971

[29 September 1993]

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

1. Short Title and commencement—(1) This Act may be cited as the Apple and Pear Marketing Amendment Act 1993, and shall be read together with and deemed part of the Apple and Pear Marketing Act 1971 (hereinafter referred to as the principal Act).

(2) Sections 7, 8, 10, and 14 to 19 of this Act shall come into force on the 1st day of October 1993.

(3) Sections 2, 3, 5, 6, 9, 12, 13, and 20 to 25 of this Act shall come into force on the 1st day of January 1994.

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the day on which it receives the Royal assent.

2. New Zealand Apple and Pear Marketing Board—

(1) Section 3 of the principal Act is hereby amended by repealing subsections (2) to (4), and substituting the following subsections:

“(2) The Board shall comprise—

“(a) Four directors appointed by the Minister on the nomination of the Fruitgrowers Federation; and

“(b) Subject to subsection (2A) of this section, 3 directors (each being a person who, in the Board’s opinion, is qualified by commercial expertise to be a director) appointed by the Minister on the Board’s nomination.

“(2A) The Board shall not nominate a person for appointment as a director under subsection (2) (b) of this section without first consulting the Fruitgrowers Federation.”

(2) Section 6 of the principal Act is hereby consequentially amended by repealing subsection (2), and substituting the following subsections:

“(2) Any deputy appointed under this section to act for a director appointed under section 3 (2) (a) of this Act shall be appointed on the nomination of the Fruitgrowers Federation.

“(2A) Any deputy appointed under this section to act for a director appointed under section 3 (2) (b) of this Act—

“(a) Shall be a person who, in the Board’s opinion, is qualified by commercial expertise to act as the deputy of such a director; and

“(b) Shall be appointed on the nomination of the Board.”

(3) Section 8 of the principal Act is hereby consequentially amended by repealing subsection (3), and substituting the following subsection:

“(3) At all meetings of the Board, the quorum necessary for the transaction of business is 4 directors.”

(4) The principal Act is hereby consequentially amended—

(a) By omitting the word “member” from sections 4 (1), 4 (2), 4 (3), 5 (2), 5 (3), 6 (1) (in both places where it occurs), 6 (3) (in both places where it occurs), 7 (1) (in both places where it occurs), 7 (2), 8 (5) (in both places where it occurs), 12 (3) (where it secondly occurs), 17 (2), and 17 (3), and substituting in each case the word “director”; and

- (b) By omitting the word “member” from sections 4 (4) and 7 (4), and substituting in each case the words “director of the Board”; and
- (c) By omitting the word “members” from sections 5 (1), 5 (3), 8 (2), and 8 (5), and substituting in each case the word “directors”.
- (5) Section 4 (5) of the principal Act is hereby repealed.
- (6) The people holding office immediately before the 1st day of January 1994 as members of the Board appointed on the nomination of the Fruitgrowers Federation shall continue in office as if appointed as directors of the Board under section 3 (2) (a) of the principal Act; but their terms shall be ascertained by reference to their most recent appointment as members of the Board.
- (7) The other people holding office immediately before the 1st day of January 1994 as members of the Board shall continue in office as if appointed as directors of the Board under section 3 (2) (b) of the principal Act; but—
- (a) If they do not earlier vacate office, their terms shall cease on the appointment of any director of the Board under section 3 (2) (b) of the principal Act; and
- (b) None of them shall—
- (i) Be present at a meeting of the Board; or
- (ii) In any way participate in a meeting of the Board; or
- (iii) Be counted for the purpose of determining whether there is a quorum at a meeting of the Board,—
- at a time when it discusses or determines any matter relating to the nomination of any person for appointment as a director of the Board under section 3 (2) (b) of the principal Act.
- (8) Of the people first nominated by the Board for appointment as directors of the Board under section 3 (2) (b) of the principal Act, the Board shall nominate one for appointment for a term of 1 year, one for appointment for a term of 2 years, and one for appointment for a term of 3 years; and, notwithstanding section 4 (1) of the principal Act, each shall be appointed for the term concerned.

3. Board to have powers of natural person—(1) Section 3A of the principal Act (as inserted by section 2 (1) of the Apple and Pear Marketing 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

“(b) Buying (whether in New Zealand or overseas) and selling in New Zealand,—

“(i) Apples or pears; and

“(ii) Any other horticultural product that may, in the Board’s opinion, conveniently be bought, or sold in New Zealand, in conjunction with apples or pears; or

“(c) Buying in New Zealand, and exporting and marketing outside New Zealand, apples or pears that comply with the Board’s standards for the time being established under section 17A of this Act; or

“(d) Buying in New Zealand and, with the consent of the Fruitgrowers Federation, exporting and marketing outside New Zealand, apples or pears that do not comply with the Board’s standards for the time being established under section 17A of this Act; or

“(e) Selling in New Zealand apples or pears that became its property under section 18B (4) of this Act; or

“(f) 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

“(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).”

(2) Section 9 (3) of the principal Act is hereby amended by omitting the words “and such powers”.

(3) Section 9 (4) of the principal Act is hereby consequentially repealed.

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

(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

(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.

4. 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 2 (1) of the Apple and Pear Marketing Amendment Act 1988), the following section:

“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 (otherwise than in respect of a season before the 1st day of October 1992)—

“(a) At any time after the commencement of section 4 of the Apple and Pear Marketing Amendment Act 1993, under section 11 (1) (b), section 19 (2) (a), section 19 (2) (b) (i) (in relation only to consulting the Fruitgrowers Federation), section 19 (2) (b) (ii), section 27AA, section 27AB, section 28A, section 31, section 33, or section 44 of this Act; or

“(b) At any time after the 30th day of September 1993, under section 17A of this Act,—

by any person (whether the Board, any person acting on the Board’s behalf, or any other person).

“(2) In determining, for the purposes of section 43 (1) of the Commerce Act 1986, whether any act, matter, or thing done at any time referred to in paragraph (a) or paragraph (b) of subsection (1) of this section 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 that paragraph; 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 that paragraph.”

5. Meetings of Board—Section 8 of the principal Act is hereby amended by repealing subsection (8), and substituting the following subsections:

“(8) A resolution assented to by electronic message, facsimile message, letter, telegram, or telex, by all directors of the Board is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

“(8A) Where—

“(a) There is held a telephone or video conference of at least 4 directors of the Board; and

“(b) All reasonable efforts have been made to enable every director of the Board to participate in the conference; and

“(c) A resolution is assented to by a majority of the directors of the Board participating in the conference,—
the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.”

6. Principal functions of Board—(1) Section 9 of the principal Act is hereby amended by repealing subsection (1) (as amended by section 4 (4) of the Apple and Pear Marketing Amendment Act 1988), and substituting the following subsection:

“(1) The Board’s principal functions are—

“(a) To acquire, export, and market outside New Zealand apples and pears that—

“(i) Are submitted to it for acquisition under Part II of this Act; and

“(ii) Comply with its standards for the time being established under section 17A of this Act; and

“(b) To fix under section 27AB of this Act the prices it is to pay for those apples and pears.”

(2) The principal Act is hereby consequentially amended—

(a) By inserting in section 9 (2) (b), before the word “apple”, the words “export sector of the”; and

(b) By omitting from section 10 the words “exercise of its functions and powers”, and substituting the words “performance and exercise of its functions and powers (other than the exercise of the power specified in paragraph (b), paragraph (c), or paragraph (e) of section 3A (3) of this Act)”; and

(c) By adding to section 11 (1) (a) the words “under section 9 (1) (a) of this Act; and

(d) By omitting from section 11 (1) (b) the words “intended for export”; and

(e) By inserting in paragraphs (c), (d), and (h) of section 11 (1), after the word “acquired”, the words “or bought”.

(3) Section 11 (1) of the principal Act is hereby further consequentially amended by repealing paragraph (ha) (as inserted by section 2 (1) of the Apple and Pear Marketing Amendment Act 1977), and substituting the following paragraph:

“(ha) Where, in the Board’s opinion, such an activity may conveniently be carried out in conjunction with the acquisition, export and marketing of apples and pears, for the handling, transport, storage, treatment, export, marketing, and disposition of any horticultural products other than apples and pears for the time being approved by the Minister:”.

(4) The following enactments are hereby consequentially repealed:

(a) Section 2 (1) of the Apple and Pear Marketing Amendment Act 1977:

(b) Section 4 (4) of the Apple and Pear Marketing Amendment Act 1988.

7. Delegation of powers of Board—The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. (1) The Board may—

“(a) In respect of any particular matter or class of matter specified in the instrument of delegation; or

“(b) In respect of any particular area, within or outside New Zealand, specified in the instrument of delegation; or

“(c) In respect of both,—

by writing under its seal, delegate to any person any of its powers under this Act (including a power to execute deeds on the Board’s behalf, but not including this power of delegation).

“(2) Subject to any general or special directions or conditions given or imposed by the Board (whether at the time the powers were delegated or later), a person to whom powers are delegated under subsection (1) of this section may exercise them in the same manner, and to the same effect, as if they had been conferred directly by this Act and not by delegation.

“(3) Every person purporting to act pursuant to a delegation under subsection (1) of this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with its terms.

“(4) Every delegation under subsection (1) of this section is revocable at will.

“(5) The delegation of a power under subsection (1) of this section does not prevent or affect its exercise by the Board.”

8. New Part 1A of principal Act—The principal Act is hereby amended by inserting, before Part II, the following Part:

"PART IA

"STANDARDS

"17A. Board to establish standards for export apples and pears—(1) Subject to subsection (2) of this section, the Board may at any time—

"(a) Establish for apples or pears a standard of acceptability for the purposes of export; or

"(b) Revoke or amend any such standard.

"(2) The Board shall not after the 20th day of December in any season establish, revoke, or amend a standard with effect before the end of that season without consulting the Fruitgrowers Federation.

"(3) A standard expressed to take effect at a particular time after it is established shall take effect at that time.

"(4) Except as provided in subsection (3) of this section, a standard shall take effect when established.

"(5) A standard expressed to apply to or for a specified period only shall (unless it is earlier revoked) expire—

"(a) At the end of the period; or

"(b) Where before it expires or is revoked it is amended to specify a longer or further period, at the end of that period (or the latest such period).

"(6) Except as provided in subsection (5) of this section, a standard shall continue in force until revoked.

"(7) The Board may—

"(a) Refuse to establish any standard for apples or pears of a variety it considers unsuitable for export:

"(b) Establish differing standards for apples and pears of different kinds or varieties:

"(c) Establish 2 or more standards for apples or pears of the same kind or variety:

"(d) Include in any standard matters relating to any or all of the following:

"(i) Quality, size, weight, shape, colour, chemical content, or any other inherent characteristic of the fruit to which it relates:

"(ii) Management, harvest time and locality, harvest method, packing, grading, storage, transport, or any other activity undertaken in respect of the fruit to which it relates:

"(iii) Climatic conditions.

"(8) Subsection (7) of this section does not affect the generality of subsection (1) of this section.

“(9) Every standard established on or before the 31st day of December 1993 shall have effect as if it had been established at the close of that day.

“17B. **Board to notify growers of standards**—(1) The Board shall, by written notice to every grower (being, in the Board’s opinion, a grower of apples or pears intended to become the Board’s property under section 18B (4) of this Act) whose postal address it knows—

“(a) Before the 21st day of December in every season, inform the grower of the standards established under section 17A of this Act that will be in force during that season:

“(b) As soon as is practicable after establishing, revoking, or amending a standard, inform the grower of the establishment, revocation, or amendment concerned.

“(2) The Board shall take all practicable steps to ensure that—

“(a) Every grower who, at any of its offices, asks for copies of all or any of the standards for the time being in force, or yet to come into force, under section 17A of this Act, is given those copies without charge; and

“(b) There are available at all its offices a number of copies of those standards sufficient to enable prompt compliance with paragraph (a) of this subsection.”

9. New Part II of principal Act—The principal Act is hereby amended by repealing Part II (as amended by section 3 of the Apple and Pear Marketing Amendment Act 1977), and substituting the following Part:

“PART II

“GROWERS MAY REQUIRE BOARD TO ACQUIRE APPLES AND PEARS

“18A. **Growers may submit apples and pears to Board**—
(1) Subject to subsection (2) of this section, any grower may, by delivering any apples or pears to a place, and at a time, notified by the Board—

“(a) By public notice; or

“(b) By notice to the grower,—

at a place and time appointed by the Board for the purposes of this Part of this Act, submit those apples or pears to the Board for acquisition under this Part of this Act.

“(2) The apples or pears shall be accompanied by the following information, stated accurately by a means (or 1 of 2 or more means) for the time being approved by the Board for the purpose:

“(a) Their kind, variety, grade, quantity, and count; and

“(b) All other particulars required by the Board.

“18B. **All export-quality fruit to be accepted**—(1) Subject to subsection (2) of this section, the Board shall accept all apples and pears submitted to it in accordance with section 18A of this Act.

“(2) The Board shall not accept any apples or pears submitted to it at any time in accordance with section 18A of this Act—

“(a) If it (or a person acting on its behalf) is satisfied that they do not comply with any standard then in force under section 17A of this Act that is applicable to them; or

“(b) If they belong to a variety for which no such standard is then in force.

“(3) The Board shall give the grower of apples or pears submitted to it in accordance with section 18A of this Act written notice that they have been accepted, or have not been accepted, or that some have been accepted and some have not.

“(4) On acceptance by the Board, apples and pears become the Board’s property.

“18c. **Non-standard apples and pears**—(1) This subsection applies to any apples and pears if, after the time when they became the Board’s property under section 18B (4) of this Act, the Board (or a person acting on its behalf) becomes satisfied on reasonable grounds that—

“(a) They did not then comply with any standard for the time being in force under section 17A of this Act that was then applicable to them; or

“(b) They belong to a variety for which no such standard was then in force.

“(2) This Act shall have effect in relation to any apples or pears to which subsection (1) of this section applies as if the appropriate price fixed for them under section 27AB of this Act is the higher of—

“(a) The Board’s best estimate of its net return (or likely net return) from their marketing; and

“(b) A zero price;—

and where the Board has already made for them any payment in excess of that price, it may at any time recover all or any part of that payment from their grower,—

“(c) By deducting it from any amount otherwise payable to the grower; or

“(d) In any Court of competent jurisdiction.”

10. New sections substituted—(1) The principal Act is hereby amended by repealing sections 27AA and 27AB (as substituted by section 4 (1) of the Apple and Pear Marketing Amendment Act 1988), and substituting the following sections:

“27AA. **Board to pay prices fixed**—Subject to subsection (5) of section 27AB of this Act, the Board shall pay for the apples and pears that become its property under section 18B (4) of this Act the appropriate prices for the time being fixed under that section.

“27AB. **Board to fix prices**—(1) Before the 1st day of March in each season the Board shall consult the Fruitgrowers Federation on pricing policies for the season and, in the light of the consultation, fix prices for the apples and pears that become its property under section 18B (4) of this Act during the season.

“(2) If the Board does not fix any prices under subsection (1) of this section before the 1st day of March in any season, there shall be deemed to have been fixed under that subsection the prices finally fixed for the previous season.

“(3) Subject to subsection (4) of this section, if at any time the Board believes that a price fixed under this section should be increased or decreased, it may with effect on and after any day during the season concerned, cancel the price and fix an increased or decreased price in its place.

“(4) The Board shall not cancel a price and fix a decreased price in its place with effect on and after a day earlier than the day of its fixing unless the Fruitgrowers Federation has approved the retroactive effect of the decreased price.

“(5) Where the Board fixes a price under this section with effect on and after a day earlier than the day of its fixing,—

“(a) It shall make appropriate consequential changes to the payments made or to be made for fruit that have become or become its property under section 18B (4) of this Act during the season concerned; and

“(b) Where it has already made for any apples or pears to which the price relates any payment greater than the price (or payments together greater than the

price), it may at any time recover the difference from their grower,—

“(i) By deducting it from any amount otherwise payable to the grower; or

“(ii) In any Court of competent jurisdiction.

“(6) The Board may fix under this section different prices for fruit of different kinds, varieties, standards, qualities, or sizes, or fruit grown in different places.

“(7) In fixing prices under this section, the Board shall have regard to the desirability of reflecting in them the differing market realisations that the Board expects during the season for different kinds, varieties, standards, qualities, and sizes of apples and pears.

“(8) In fixing prices under this section, the Board may have regard to—

“(a) The desirability of maintaining the stability and efficiency of the export sector of the apple and pear growing industry:

“(b) Movements in the costs of marketing apples or, as the case may be, pears exported from New Zealand:

“(c) The present and prospective state of the Board’s financial accounts and reserves:

“(d) Any other matters the Board thinks relevant.

“(9) To the extent that any price fixed under this section differs from the price that would have been fixed had the Board had regard only to the matter specified in subsection (7) of this section in fixing it, the Board shall—

“(a) As soon as is practicable after fixing it; and

“(b) By written notice to the Fruitgrowers Federation,— specify its reasons for fixing the price.

“(10) The Board may from time to time fix for apples or pears that become its property under any special arrangement or subject to any special terms or conditions a price that differs from that otherwise payable for apples or pears of the same kind, variety, quality, standard, and size, grown in the same place.”

(2) Section 28A of the principal Act (as substituted as aforesaid) is hereby consequentially amended—

(a) By omitting from subsection (1) the words “it buys”, and substituting the words “that become its property under section 18B (4) of this Act”; and

(b) By omitting from subsection (3) the words “bought by the Board”, and substituting the words “that became the Board’s property under section 18B (4) of this Act”.

(3) Section 4 (1) of the Apple and Pear Marketing Amendment Act 1988 is hereby consequentially repealed.

11. Levy on apples and pears—(1) Section 31 of the principal Act is hereby amended by repealing subsections (1) and (2) (as amended by section 5 (a) of the Apple and Pear Marketing Amendment Act 1988), and substituting the following subsections:

“(1) The Board may from time to time, with the approval of the Fruitgrowers Federation,—

“(a) Impose on all apples and pears that become the Board’s property under section 18B (4) of this Act a levy payable by growers to the Board; and

“(b) Determine the rate or rates at which the levy is to be paid.

“(2) The Board may impose the levy at rates that differ by virtue of all or any of the following matters:

“(a) The kind or description of the apples and pears on which it is imposed:

“(b) The quality of the apples and pears on which it is imposed:

“(c) The region in which the apples and pears on which it is imposed are grown;—

and may set a zero rate.”

(2) The said section 31 is hereby consequentially amended—

(a) By omitting—

(i) From subsection (3) the words “any such levy”; and

(ii) From subsection (4) the words “every such levy”; and

(iii) From subsection (7) the words “any levy”,— and substituting, in each case, the words “the levy”; and

(b) By omitting from subsection (5) the words “Any such levy”, and “and interest shall be paid from time to time on the whole or part of any levy which is to be refunded”, and substituting, respectively, the words “The levy” and “, together with interest,”.

(3) Section 5 (a) of the Apple and Pear Marketing Amendment Act 1988 is hereby consequentially repealed.

12. Compulsory hail insurance scheme—(1) Section 31B of principal Act (as inserted by section 2 of the Apple and Pear Marketing Amendment Act (No. 2) 1981) is hereby amended by omitting from subsection (1) the words “be sold to the Board”,

and substituting the words “become the Board’s property under section 18B (4) of this Act”.

(2) Subsection (3) of the said section 31B is hereby amended by omitting the words “who sell or intend to sell apples or pears to the Board”, and substituting the words “of apples or pears that become, or are intended to become, the Board’s property under section 18B (4) of this Act”.

(3) The said section 31B is hereby further amended by adding the following subsection:

“(7) Notwithstanding sections 3 (1) and 4 (1) of the Insurance Companies’ Deposits Act 1953, the Board shall not, by virtue only of instituting, entering into, carrying out, or renewing, any scheme under this section, be required to make any deposit with the Public Trustee.”

(4) Subject to section 24 of the Insurance Companies’ Deposits Act 1953, at any time on or after the 1st day of July 1994 the Board may withdraw any deposit made to the Public Trustee under that Act before that day.

13. Capital charge—Section 32B of the principal Act (as substituted by section 4 (1) of the Apple and Pear Marketing Amendment Act 1981, and amended by section 7 of the Apple and Pear Marketing Amendment Act 1988) is hereby amended—

- (a) By omitting from subsections (1) and (2) the words “purchased by the Board from growers”, and substituting the words “that become the Board’s property under section 18B (4) of this Act”; and
- (b) By omitting from subsection (3) the words “be purchased by the Board”, and substituting the words “become the Board’s property under section 18B (4) of this Act”; and
- (c) By omitting from subsection (4) the words “purchased by the Board”, and substituting the words “that became the Board’s property under section 18B (4) of this Act or (before the 1st day of January 1994) were purchased by the Board”; and
- (d) By inserting in subsection (5), before the words “it buys”, the words “that become the Board’s property under section 18B (4) of this Act or (before the 1st day of January 1994)”.

14. Disposition of seasonal profit—(1) Section 33 of the principal Act (as substituted by section 8 (1) of the Apple and Pear Marketing Amendment Act 1988) is hereby amended by

repealing subsection (2), and substituting the following subsection:

“(2) After consultation with the Fruitgrowers Federation, the Board may, in accordance with this section, distribute to growers of apples and pears that became its property under section 18B (4) of this Act during any season all or any part of any seasonal profit for the season.”

(2) The said section 33 is hereby further amended by repealing subsections (4) and (5), and substituting the following subsections:

“(4A) In determining the basis on which any part of a seasonal profit that (in its opinion) was made out of the marketing overseas during the season concerned of apples and pears that became its property under section 18B (4) of this Act during the season should be distributed, the Board shall have regard to the desirability of reflecting in the distribution the differing market realisations that the Board achieved during the season for different kinds, varieties, standards, qualities, and sizes of apples and pears.

“(4B) Subject to subsection (4A) of this section, the Board may distribute any part of a seasonal profit on any basis it thinks fair and equitable.”

(3) This Act shall have effect in relation to the season that commenced on the 1st day of October 1992 as if this section had not been passed.

15. Board to prepare financial statements—The principal Act is hereby amended by repealing section 37A (as substituted by section 9 (1) of the Apple and Pear Marketing Amendment Act 1988), and substituting the following section:

“37A. (1) As soon as is practicable after the 30th day of September in each year, the Board shall prepare financial statements in accordance with this section.

“(2) Where there is in force a single financial reporting standard approved by the Accounting Standards Review Board under section 27 of the Financial Reporting Act 1993 (hereafter in this section referred to as an approved standard), the Board shall comply with the standard as if it is an issuer (within the meaning of that Act).

“(3) Where—

“(a) There are in force 2 or more approved standards; and

“(b) The Accounting Standards Review Board has approved 1 of them as the appropriate standard for—

“(i) The Board; or

“(ii) Institutions of a kind or description to which the Board belongs,—
the Board shall comply with the standard as if it is an issuer (within the meaning of that Act) or, as the case requires, an issuer of the kind or description to which the standard is expressed to apply.

“(4) Where—

“(a) No approved standards are in force; or

“(b) There are in force 2 or more such standards; but the Accounting Standards Review Board has not approved any of them as the appropriate standard for—

“(i) The Board; or

“(ii) Institutions of a kind or description to which the Board belongs,—

the Board shall comply with accounting standards that are appropriate to the Board’s circumstances and have authoritative support within the accounting profession in New Zealand.

“(5) In every case, the Board’s statements shall, in respect of every subsidiary (within the meaning of section 5 of the Companies Act 1993) of the Board, include statements of the kind that holding companies are required by section 13 of the Financial Reporting Act 1993 to prepare in respect of subsidiaries.

“(6) For the purposes of this Act, the Accounting Standards Review Board may approve financial reporting standards for the Board whether or not it is an issuer within the meaning of the Financial Reporting Act 1993.”

16. Audit of accounts and financial statements—(1) The principal Act is hereby amended by repealing section 38 (as substituted by section 9 (1) of the Apple and Pear Marketing Amendment Act 1988), and substituting the following section:

“38. (1) Subject to subsection (2) of this section,—

“(a) The statements referred to in section 37A 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 growers obtained, within 12 months before the end of the period to which the statements relate, at an annual general meeting held under section 38c of this Act.

“(2) Where, at the end of the period to which any statements referred to in section 37A of this Act relate, there is no person appointed auditor under subsection (1) of this section, the statements shall be audited by an auditor appointed by the Minister.

“(3) For the purposes of the audit of any statement referred to in section 37A 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 1993.

“(4) Where the Board or the Minister appoints or reappoints the Audit Office to audit any statements, the Audit Office may audit those statements.”

(2) Section 38A (2) of the principal Act (as substituted as aforesaid) is hereby consequentially amended by omitting the words “Audit Office”, and substituting the word “auditor”.

(3) Section 9 of the Apple and Pear Marketing Amendment Act 1988 is hereby consequentially repealed.

(4) The Audit Office may take any actions necessary to complete the audit of any statements relating (wholly or in part) to the season that commenced on the 1st day of October 1992.

17. Annual report and statements—(1) Section 38A of the principal Act (as substituted by section 9 (1) of the Apple and Pear Marketing Amendment Act 1988) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) As soon as is practicable after the statements referred to in section 37A of this Act have been prepared in respect of any season and audited, the Board shall prepare and give to the Minister—

“(a) A report of its operations and proceedings for the season (including a report on the exercise of its statutory powers); and

“(b) A copy of the statements and the report of its auditor on them; and

“(c) Whether or not those matters are separately disclosed in those statements, a statement of each of the following matters:

“(i) The sum of the fees paid by the Board during the season to its directors and their deputies:

“(ii) The sum of the fees and other emoluments (however described) paid by subsidiaries (within the

meaning of section 5 of the Companies Act 1993) of the Board to their directors.”

(2) The said section 38A is hereby further amended by adding the following subsection:

“(3) The Board shall, without charge, make copies of the report and statements most recently given to the Minister under subsection (1) of this section available to all growers who ask for them; and for that purpose shall ensure that there are available at every annual general meeting enough copies for all growers attending.”

18. Performance and efficiency audits—The principal Act is hereby amended by inserting, after section 38A (as substituted by section 9 (1) of the Apple and Pear Marketing Amendment Act 1988), the following section:

“38B. (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—

“(a) The Board’s performance of its functions and use of its powers under this Act; and

“(b) The objectives, policies, and strategies established or put in place by the Board and its operating companies; and

“(c) The procedures adopted by the Board and its operating companies.

“(2) While an audit shall relate to—

“(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.

“(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.

“(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 Fruitgrowers Federation; and

“(b) Shall not seek the approval of the Fruitgrowers Federation of proposed terms of reference for an

audit before making known to it the views expressed by the Minister under subsection (4) of this section.

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

“(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 Fruitgrowers Federation to any proposed terms of reference for an audit,—

the terms of reference for the audit shall be prescribed by the Minister by notice in the *Gazette*, after consultation with the Board.

“(8) Subject to subsections (9) and (10) of this section, every audit shall be carried out by a person appointed by the Board, at least one month before the day as at which it is to be carried out, after consultation with the Minister.

“(9) The Board shall not appoint a person to carry out an audit without the approval of the Fruitgrowers Federation.

“(10) Where the Board—

“(a) Has failed or refused to consult the Minister before 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,—

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

“(11) How effectively and efficiently the Board is performing includes—

“(a) The objectives that the Board has established; and

“(b) The extent to which those objectives are in keeping with the effective carrying out of its functions under this Act; and

“(c) The nature of those objectives, the manner in which they were put in place, and any systems established by the Board for revising or reviewing them; and

“(d) The progress the Board is making towards the achievement of those objectives; and

“(e) The extent to which the Board has put in place policies and strategies to use its resources effectively and efficiently for the purpose of achieving those objectives and performing its functions; and

“(f) The nature of those policies and strategies, the manner in which they were put in place, and any systems for revising or reviewing them; and

“(g) The manner in which the Board is—

- “(i) Performing its functions; and
 - “(ii) Exercising its powers; and
 - “(iii) Carrying on its activities; and
 - “(iv) Implementing its policies and strategies; and
- “(h) The contribution that the Board’s operating companies (including its subsidiaries and associates) are making towards the Board’s progress in achieving its objectives and implementing its policies and strategies;—

but the fact that any other matter is determined under subsection (5) of this section (or prescribed under subsection (7) of this section) is conclusive evidence that it relates to the performance and efficiency of the Board.

“(12) 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.

“(13) If asked by a grower to do so, the Board shall, without charge, give the grower a written summary of the conclusions and recommendations contained in any report a copy of which has been given to the Board under subsection (12) of this section.

“(14) 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.

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

“(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.

“(16) The first audit shall be carried out as soon as may be after the 1st day of October 1994; and shall relate to the Board’s performance as at that day.

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

“(a) The 1st day of October 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 October fixed by the Board;—
and shall relate to the Board’s performance as at that day.”

19. Annual general meetings—The principal Act is hereby amended by inserting, in the place of the former section 39, the following section:

“38c. (1) At least once in every season, the Board shall convene an annual general meeting of growers of apples or pears intended to become the Board’s property under section 18B (4) of this Act.

“(2) Those attending an annual general meeting shall consider—

“(a) Any matters prescribed by regulations made under this Act; and

“(b) Whether or not to approve the Board’s recommendation on the appointment or reappointment of an auditor to audit the statements referred to in section 37A of this Act; and

“(c) Where and when the next annual general meeting should be held.

“(3) Subsections (4) to (7) of section 8 of this Act shall apply to an annual general meeting as if it is a meeting of the Board.

“(4) Subject to subsection (3) of this section and regulations made under this Act, the procedure at an annual general meeting shall be regulated as the person presiding thinks fit.”

20. Repeal of provisions affecting local market—The following enactments are hereby repealed:

(a) Sections 41 to 43 of the principal Act:

(b) The Apple and Pear Marketing Amendment Act 1974:

(c) The Apple and Pear Marketing Amendment Act 1980.

21. Restrictions on export of apples and pears—(1) The principal Act is hereby amended by repealing section 44 (as amended by section 7 of the Apple and Pear Marketing Amendment Act 1977), and substituting the following section:

“44. (1) No person other than the Board shall export apples or pears from New Zealand except—

“(a) As the agent of the Board; or

“(b) With the Board’s consent.

“(2) After the 31st day of May 1994, the Board shall grant or refuse its consent to the export of apples or pears from New Zealand after having had regard to relevant guidelines for the time being established by the Board for the purposes of this section and published by the Board.

“(3) The Board may give its consent unconditionally, or subject to any conditions it thinks fit; and if any condition subject to which its consent was given is not complied with, the Board may, by written notice to the person to whom it was given, revoke it.

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

“(5) The Board may refuse to decide whether to give its consent until the applicant for it has given the Board all information that (in the Board’s opinion held on reasonable grounds) it is necessary for the Board to have in order to decide.

“(6) On request by any person, the Board shall give the person written notice of the guidelines for the time being in force under this section.

“(7) Every person who exports apples or pears from New Zealand in contravention of subsection (1) of this section commits an offence against this Act.”

(2) Section 7 of the Apple and Pear Marketing Amendment Act 1977 is hereby repealed.

22. Miscellaneous offences—Paragraphs (a), (b), and (d) of section 45 of the principal Act are hereby repealed.

23. Penalties—The principal Act is hereby amended by repealing section 46, and substituting the following section:

“46. Every person who commits an offence against this Act is liable on summary conviction—

“(a) If the offence was committed by a corporation, to a fine not exceeding \$20,000:

“(b) If the offence was committed by an individual, to a fine not exceeding \$5,000.”

24. Regulations—Section 47 of the principal Act is hereby amended by repealing paragraphs (a) to (i), and substituting the following paragraphs:

“(a) Prescribing procedures for meetings of the Board:

“(b) Prescribing procedures for meetings of committees of the Board:

“(c) Prescribing, in respect of meetings held under section 38c of this Act,—

“(i) Who may attend:

“(ii) Who may vote on matters under consideration; and any weighting to be accorded each vote (or a means by which any such weighting may be calculated or ascertained):

“(iii) Matters (in addition to those specified in paragraphs (b) and (c) of section 38c (2) of this Act) that are to be considered:

“(iv) Matters on which resolutions must or may be passed:

“(v) The extent (if any) to which proxy voting is permissible, and, if it is, the manner and circumstances in which it is to be carried out:

“(vi) When (if at all) people not entitled to attend may be excluded:

“(vii) How resolutions are to be submitted, and adopted or rejected:

“(viii) Subject to section 38c (3) of this Act, how proceedings are to be regulated.”.

25. Revocations—(1) The following regulations are hereby revoked:

(a) The Apple and Pear Marketing Regulations 1975:

(b) The Apple and Pear Marketing Regulations 1975, Amendment No. 1:

(c) The Apple and Pear Marketing Regulations 1975, Amendment No. 2.

(2) Subsections (2) to (4) of section 12 of the New Zealand Horticulture Export Authority Amendment Act 1992 are hereby consequentially repealed.

This Act is administered in the Ministry of Agriculture and Fisheries.
