

APPLE AND PEAR MARKETING BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Apple and Pear Marketing Act 1948. The principal changes are as follows:

- (a) The principal exception to the general requirement that apples and pears sold by growers must be sold to the Board is now to be found in *clause 42* of the Bill. This is the "2 case exemption" in respect of sales made directly to consumers. This exemption is at present provided for, in a somewhat different form, in regulations.
- (b) The Board is enabled, by the first proviso to *paragraph (a) of subclause (b) of clause 32*, to pay to those growers whose apples or pears are acquired by the Board under a special arrangement or subject to special terms or conditions approved by the Minister pursuant to the first proviso to *clause 28 (3)* the whole of that part of the annual profit which the Board distributes to growers or a share of the amount so distributed greater than that distributed to growers whose apples and pears are not so acquired.
- (c) A power of entry and inspection is conferred on the Board's Inspectors by *clause 40*. It does not apply to dwellinghouses.
- (d) *Clauses 41 and 43*, which relate to offences, are in many respects new.
- (e) *Clause 46*, which authorises the making of regulations, specifies a number of new matters in respect of which regulations may be made.

Clause 1 relates to the Short Title of the Bill.

Clause 2 defines terms used in the Bill. The definitions of the terms "Authority", "Department", "Director-General", "Industry Account", "Reserve Account", and "sale" are new. The new definition of "sale" is based on a definition at present contained in the Apple and Pear Marketing Regulations 1949 (S.R. 1949/159).

PART I

NEW ZEALAND APPLE AND PEAR MARKETING BOARD

Clause 3 deals with the establishment of the New Zealand Apple and Pear Marketing Board. The clause is substantially the same as the existing provision and no change has been made in the composition of the Board.

Clause 4 deals with the term of office of members of the Board. The term remains at 3 years and existing members of the Board are continued in office.

Clause 5 provides for the election of the Chairman and the Deputy Chairman of the Board. The clause is an expanded and more explicit version of existing provisions.

Clauses 6, 7, and 8 which deal with the appointment of deputies of members, extraordinary vacancies in the membership of the Board, and meetings of the Board respectively are re-enactments, with minor amendments, of existing provisions.

Clause 9 sets out, without material change, the principal functions and powers of the Board.

Clause 10 re-enacts an existing provision whereby the Board is required to comply with the general trade policy of the Government.

Clause 11 sets out the general powers of the Board in respect of apples and pears. The consent of the Minister is no longer required before the powers conferred by *paragraph (d)* and *paragraph (h)* of *subclause (1)* may be exercised. The power conferred by *subclause (2)* to subscribe for or otherwise acquire shares in companies is no longer limited to companies incorporated in New Zealand. There are no other changes in this clause.

Clause 12 provides for the appointment by the Board of advisory or technical committees. The clause is in more general terms than the existing provision.

Clause 13 sets out the Board's powers to deal with real and personal property. *Paragraph (c)* of *subclause (1)* and *subclause (2)* are now very similar to section 53 of the Dairy Board Act 1961.

Clause 14 authorises the Board to appoint officers and employees. The clause is an expanded form of an existing provision.

Clause 15 provides for the performance of functions of the Board by agents. Specific provision is no longer made for the Department of Agriculture to act as agent for the Board.

Clause 16 authorises the Board to insure members of the Board or the Authority or of any advisory or technical committee appointed by the Board, and the deputies of any such members. The existing provision relates to members of the Board only. *Subclause (2)* is new. It specifically authorises the Board to pay the net proceeds received by it under any such contract of insurance to any person affected or to his personal representative, as the case may require.

Clause 17 deals with the manner in which the Board may make contracts. The clause has been revised in light of the provisions of section 49 of the Dairy Board Act 1961 and of the Public Bodies Contracts Act 1959. In particular *subclauses (2) and (3)* have been amended so that officers of the Board, as well as members, may now, with the authority of the Board, make contracts on behalf of the Board. The limit contained in *subclause (3)*, in respect of oral contracts, has been raised from \$100 to \$400.

PART II

ACQUISITION OF APPLES AND PEARS

Clause 18 defines the apples and pears to which this Part of the Bill applies. There is little difference between this clause and the existing provision. One change is that the word "processing" has been substituted for the word "preservation" as the last word of *subclause (2)*.

Clause 19 differs in a number of respects from the existing provision.

Subclause (1) re-enacts the existing obligation of the Board to buy apples and pears.

Subclause (2) is largely new. It enables the Board to require that apples and pears, before being purchased by the Board, shall—

- (a) Be harvested in such manner and at such times as the Board may direct;
- (b) Be packed and graded in accordance with such specifications as may—
 - (i) In respect of apples and pears intended by the Board to be sold or processed within New Zealand, be determined by the Board after consultation with the Fruitgrowers' Federation; or
 - (ii) In respect of apples and pears intended by the Board to be exported from New Zealand, be prescribed by the Director-General of Agriculture by notice in the *Gazette*.

The provision with regard to harvesting is new but requirements with regard to packing and grading may at present be prescribed by regulations.

Clause 20 is a modified version of an existing provision. It authorises the Board to purchase apples and pears which are fit for human consumption but which do not come up to the lowest standard in force for the purposes of *clause 19*.

PART III

APPLE AND PEAR PRICES AUTHORITY

Clauses 21 and 22 re-enact existing provisions dealing with the establishment of the Apple and Pear Prices Authority and the term of office of its members.

Clause 23 deals with the appointment of deputies of members of the Authority.

Subclause (2) is new. It provides that any deputy appointed to act for the Chairman shall be appointed after agreement between the Minister and the Fruitgrowers' Federation.

Clause 24 deals with extraordinary vacancies in the membership of the Board. The clause is largely a re-enactment of an existing provision but *subclause (1)* now provides for the removal from office of deputies of members.

Clause 25 re-enacts, with minor alterations, an existing provision relating to meetings of the Authority.

Clause 26 re-enacts, with some modifications, the existing provision setting out the general function of the Authority. That function is to determine in each season, in accordance with this Part of the Bill, the average price to be paid by the Board for apples and pears which are produced in New Zealand and which are acquired by the Board during that season.

Clause 27 sets out the manner in which the Authority is to determine the average price. *Subclause (4)*, which gives the Authority the power to increase the average price after that price has been determined for any season, has been amended so that that power must be exercised not later than the 30th day of November in that season.

Clause 28, which deals with the prices to be paid by the Board, is largely a re-enactment of an existing provision. *Subclause (1)* has been redrafted and *subclause (4)* has been amended.

PART IV

FINANCIAL PROVISIONS

Clause 29: Subclause (1) relates to the Apple and Pear Industry Account. *Subclause (2)* provides for subsidiary bank accounts.

Subclause (3) provides that every account under this section shall be operated on only by cheque or other instrument signed by such person or persons as the Board appoints from time to time for that purpose.

Clause 30 re-enacts, with minor modifications, existing provisions relating to the Industry Account.

Clause 31 re-enacts, with some modifications, existing provisions relating to the borrowing powers of the Board. The reference to processing costs in the first proviso to *subclause (1)* is new.

Subclause (3) is new. It authorises the Board, with the approval of the Minister of Finance and in accordance with such conditions as he may specify from time to time, to receive deposits, at interest, to be applied for the purposes of the Board.

Clause 32 relates to the Industry Reserve Account and the disposition of the annual profit of the Board. The first proviso to *paragraph (a) of subclause (5)* is new. This proviso will enable the Board to pay to those growers whose apples or pears are acquired by the Board under a special arrangement or subject to special terms or conditions approved by the Minister pursuant to the first proviso to *clause 28 (3)* the whole of that part of the annual profit which the Board distributes to growers or a share of the amount so distributed greater than that distributed to growers whose apples and pears are not so acquired.

Clause 33 re-enacts, with minor modifications, an existing provision relating to guarantee of prices.

Clause 34 re-enacts an existing provision relating to the Board's powers of investment.

Clause 35 provides for the payment by the Board of fees, salary, or allowances and travelling allowances and expenses to its members, to those of the Authority, and to the members of any advisory or technical committee appointed by the Board.

Clause 36 increases from \$200 to \$500 the Board's limit on unauthorised expenditure.

Clause 37 re-enacts an existing provision relating to the audit of the Board's accounts by the Audit Office.

Clause 38 re-enacts the existing provision relating to the Board's exemption from land tax and income tax. This provision is already subject to section 154A of the Land and Income Tax Act and an express cross-reference to that section has been included.

Clause 39 re-enacts, with minor modifications, existing provisions relating to the Board's annual report and accounts and to their presentation to Parliament.

Clause 40 is new. It confers a power of entry and inspection on the Board's Inspectors. This power *does not* authorise any such Inspector to enter a dwellinghouse.

Clause 41: Subclause (1) provides that, subject to *subclause (2)* and *clause 42* and except as otherwise provided in regulations made under the Act, every person commits an offence against the Act who—

- (a) Being a grower, knowingly sells to any person other than the Board any apples or pears which the Board is obliged by *subsection (1) of section 19* of this Act to purchase; or
- (b) Not being the Board, knowingly sells to any person other than the Board any apples or pears which have not previously been purchased from the Board by the person who effects the sale or by some other person.

Subclause (2) provides that it shall be a good defence to a prosecution for selling any apples or pears contrary to *paragraph (a)* or *paragraph (b)* of *subclause (1)* if the defendant proves that the apples or pears were not intended for human consumption.

Subclause (3) provides that it shall be a good defence to a prosecution for selling any apples or pears contrary to *paragraph (b)* of *subclause (1)* if the defendant proves that the apples and pears were grown by him and that the Board was not obliged by *subsection (1) of section 19* to purchase the apples or pears.

Clause 42 deals with the "2 case exemption" in respect of sales to consumers.

Subclause (1) provides that a grower may sell apples or pears or both to any consumer if—

- (a) The quantity of such fruit sold to any consumer at any one time does not exceed 2 bushels; and
- (b) Each sale is made directly by the grower or a member of his family or an employee of the grower to the consumer; and
- (c) Delivery is effected by the grower either—
 - (i) At the orchard of the grower at which the fruit is grown; or
 - (ii) At premises of the consumer which are not more than 30 miles by the nearest practicable route from the orchard at which the fruit is grown; or
 - (iii) By delivering the fruit to the New Zealand Government Railways Department or to a carrier within the meaning of the Carriers Act 1948 for the purpose of transmission to the consumer; and
- (d) Where delivery is being effected by the grower pursuant to *subparagraph (ii)* or *subparagraph (iii)* of *paragraph (c)* of this subsection, the name and address or registered mark of the grower and the name and address of the consumer shall be clearly shown, before the fruit leaves the orchard, on the container in which the fruit is packed, on a label attached to that container, or on a waybill, consignment note, or delivery docket which accompanies the fruit.

The substance of this exemption is at present contained in regulation 6 (a) of the Apple and Pear Marketing Regulations 1949 (as amended by regulation 2 of the Apple and Pear Marketing Regulations 1949, Amendment No. 2) but the requirement that when the grower delivers the fruit (otherwise than by means of the Railways Department or a carrier) to the premises of the consumer those premises must be not more than 30 miles by the nearest practicable route from the orchard at which the fruit is grown and the requirements of *paragraph (d)* of *subclause (1)* as to identification before the fruit leaves the orchard are new.

Subclause (2) defines the term "consumer" for the purposes of *subclause (1)* and creates, for the purposes of that subclause and of any prosecution under *clause 41*, the following presumptions, namely that—

- (a) Every person (other than a corporation) shall be deemed to be a consumer until the contrary is proved:
- (b) No grower shall, in the absence of any indication that a person is not a consumer, be obliged to satisfy himself that any person is a consumer.

The definition of the term "consumer" is at present contained in regulation 3 (1) of the Apple and Pear Marketing Regulations 1949. The 2 presumptions are new.

Clause 43 is new. It provides that every person commits an offence against the Act who, except where the Director-General otherwise approves, exports, in the course of or for the purpose of sale, any apples or pears which are not certified by the Director-General as being packed and graded in accordance with such specifications as may be prescribed by the Director-General by notice in the *Gazette*.

Clause 44 provides that every person commits an offence against this Act who—

- (a) Without reasonable excuse (the proof of which shall lie on him) fails to comply with any requirement of the Board under *subsection (2) of section 19* of this Act or with any direction given by the Board under this Act:
- (b) Except on the grounds that he would incriminate himself or his spouse or that he would be disclosing information that he could not be compelled to disclose in any proceeding within the meaning of the Evidence Act 1908, refuses to furnish any information demanded by the Board or any duly appointed employee or officer of the Board for the purposes of this Act or of any regulations made under this Act:
- (c) With intent to deceive, makes any false or misleading statement or any material omission in any communication with or application or return to the Board or to any duly authorised employee or officer of the Board (whether in writing or otherwise) for the purposes of this Act or of any regulations made under this Act:
- (d) Wilfully obstructs, hinders, or resists any Inspector appointed pursuant to *section 14* of the Act in the execution of any of the powers conferred on the Inspector by *section 40* of the Act.

The substance of *paragraph (a)* is covered by section 32 (1) (a) of the existing Act. *Paragraphs (b) and (d)* are new. *Paragraph (c)* re-enacts an existing provision except that the words "to any duly authorised employee or officer of the Board" are new.

Clause 45 prescribes the penalties for offences against the Act. They are a fine not exceeding \$400, in the case of an individual, and, in the case of a company or other corporation, a fine not exceeding \$2,000. These are the penalties under the existing Act.

Clause 46 authorises the making of regulations. *Paragraphs (b) to (d) and (f) to (h)* are largely new. Under *paragraph (f)* persons engaged in the business of carrying apples and pears or in any business concerned with the handling of apples and pears intended for sale may be required to make returns, to keep records, and to supply information to the Board or its authorised officers or agents.

Clause 47: Subclause (1) repeals the Apple and Pear Marketing Act 1948 and its amendments.

Subclause (2) makes a consequential amendment to the Apple and Pear Marketing Regulations 1949.

Clause 48 provides that, except so far as may be expressly provided in this Act, nothing in this Act shall be so construed as to limit or affect in any way the provisions of any other Act.

Hon. Mr Carter

APPLE AND PEAR MARKETING

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A BILL INTITULED

An Act to consolidate and amend the Apple and Pear Marketing Act 1948

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 Apple and Pear Marketing Act 1970.

2. Interpretation—In this Act, unless the context otherwise requires,— 10

“Authority” means the Apple and Pear Prices Authority constituted under Part III of this Act:

“Board” means the New Zealand Apple and Pear Marketing Board constituted under this Act:

“Department” means the Department of Agriculture: 15

“Director-General” means the Director-General of Agriculture:

“District” means a land district constituted under the Land Act 1948:

“Fruitgrowers’ Federation” means the New Zealand 20
Fruitgrowers’ Federation Limited:

“Grower” means a person carrying on business as a producer of apples or pears for sale:

“Industry Account” means the Apple and Pear Industry Account established under section 29 of this Act: 25

“Minister” means the Minister of Agriculture:

“Reserve Account” means the Industry Reserve Account established under section 32 of this Act:

“Sale” includes barter and exchange or supply for profit; and also includes offering or attempting to sell, or 30
receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale; and “to sell” has a corresponding meaning:

“Season” means a period of 12 months commencing on 35
the 1st day of December in any year.

Cf. 1948, No. 53, s. 2; S.R. 1949/159, reg. 3 (1)

PART I

NEW ZEALAND APPLE AND PEAR MARKETING BOARD

3. New Zealand Apple and Pear Marketing Board—

5 (1) There shall continue to be a Board called the New Zealand Apple and Pear Marketing Board.

(2) The Board shall consist of 6 members appointed by the Governor-General on the recommendation of the Minister.

(3) Four of those members shall be appointed on the nomination of the Fruitgrowers' Federation.

10 (4) The other 2 members shall, in addition to their other functions as members of the Board, represent the interests of consumers of apples and pears.

(5) The Board shall be a body corporate with perpetual succession and a common seal and shall be capable of
15 acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(6) The Board is hereby declared to be the same body
20 corporate as the body corporate of the same name existing immediately before the commencement of this Act and constituted under the Apple and Pear Marketing Act 1948.

Cf. 1948, No. 53, s. 3 (1)–(3), (6); 1967, No. 140, s. 2 (1)

4. Term of office of members of Board—(1) Except as
25 otherwise provided by this Act, every member of the Board shall be appointed for a term of 3 years, but may from time to time be reappointed.

(2) Notwithstanding the terms of his appointment, but subject to subsection (3) of this section, the term of office of
30 every member of the Board shall expire with the 30th day of November in the year in which the term of office for which he was appointed expires.

(3) Notwithstanding anything to the contrary in this Act, every member of the Board, unless he sooner vacates his office
35 under section 7 of this Act, shall continue to hold office until his successor comes into office.

(4) Where any member continues to hold office by virtue of subsection (3) of this section after the 30th day of November
40 in any year, the term of office of his successor shall, for the purposes of subsection (1) of this section, be deemed to commence on the 1st day of December in that year.

(5) The persons holding office as members of the Board immediately before the commencement of this Act and appointed under paragraph (a) or paragraph (b) of subsection (2) of section 3 of the Apple and Pear Marketing Act 1948 (as amended by section 2 of the Apple and Pear Marketing Amendment Act 1967) shall be deemed to have been duly appointed as members of the Board under subsections (3) and (4) respectively of section 3 of this Act; and each such person shall, unless he vacates office under section 7 of this Act, continue to hold office, subject to this section until the expiry of the term of office for which he was appointed before the commencement of this Act. 5 10

Cf. 1948, No. 53, s. 5; 1954, No. 38, s. 3

5. Chairman and Deputy Chairman—(1) At the first meeting of the Board in each season the Board shall elect one of its members to be Chairman and another to be Deputy Chairman of the Board. 15

(2) Every person elected as Chairman or Deputy Chairman shall, unless he sooner resigns that office or vacates his office as a member of the Board under section 7 of this Act, hold office as such until his successor is elected under this section and shall be eligible for re-election. 20

(3) If any person who is for the time being holding office as Chairman or Deputy Chairman of the Board vacates office as a member of the Board under section 7 of this Act, an election to fill the vacancy in the office of Chairman or Deputy Chairman shall be held at the first meeting of the Board held after the vacancy on the Board has been filled. Where the office of Chairman or Deputy Chairman becomes vacant in any other case the Board shall elect one of its members to fill that vacancy within 2 months after its occurrence. 25 30

(4) Subject to the provisions of this Act, the Deputy Chairman shall have and may exercise all the powers, duties, and functions of the Chairman during the absence or incapacity of the Chairman or while there is a vacancy in the office of Chairman. 35

(5) No acts done by the Deputy Chairman acting as the Chairman and no acts done by the Board while the Deputy Chairman is acting as Chairman shall in any proceedings be questioned on the grounds that the occasion for his so acting had not arisen or had ceased. 40

Cf. 1948, No. 53, ss. 3 (4)–(5), 8 (6); 1959, No. 37, s. 2 (4); 1967, No. 140, s. 2 (1)

6. **Deputies of members**—(1) In any case in which the Minister is satisfied that any member of the Board is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a
5 deputy to act for that member during his incapacity.

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

10 (3) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Board appointed under the same provision as the member of whom he is a deputy.

15 (4) No appointment of a deputy and no acts done by him as such, and no act done by the Board while any deputy is acting as such, shall be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

20 Cf. 1948, No. 53, s. 7; 1959, No. 37, s. 2 (3); 1967, No. 140, s. 2 (3)

7. **Extraordinary vacancies**—(1) Any member of the Board or any deputy of such a member may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign
25 his office by written notice given to the Minister.

(2) If any member of the Board dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

30 (3) An extraordinary vacancy shall be filled in the same manner in which the appointment to the vacant office was originally made.

(4) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the
35 vacating member was appointed.

(5) The powers of the Board shall not be affected by any vacancy in the membership thereof.

Cf. 1948, No. 53, s. 6

8. **Meetings of Board**—(1) Meetings of the Board shall be
40 held at such times and places as the Board from time to time appoints.

(2) The Chairman of the Board or any 3 members thereof ~~may~~ at any time call a special meeting of the Board.

(3) At all meetings of the Board the quorum necessary for the transaction of business shall be 4 members including at least 1 member appointed under subsection (4) of section (3) of this Act. 5

(4) The Chairman shall preside at all meetings of the Board at which he is present.

(5) In the absence of both the Chairman and the Deputy Chairman from any meeting of the Board, the members present shall elect a member to preside at that meeting and the member presiding shall have all the powers of the Chairman in respect of that meeting. 10

(6) All questions arising at any meeting of the Board shall be decided by a majority of the valid votes recorded thereon. 15

(7) At any meeting of the Board the Chairman shall have a deliberative vote. In the case of an equality of votes the Chairman shall also have a casting vote.

(8) A resolution in writing signed, or assented to by letter or telegram, by all the members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted. 20

(9) Subject to the provisions of this Act and of any regulations made under this Act, the Board may regulate its procedure in such manner as it thinks fit. 25

Cf. 1948, No. 53, s. 8; 1959, No. 37, s. 2 (4); 1967, No. 140, s. 3

Functions and Powers of Board

9. Principal functions and powers of Board—(1) The principal functions of the Board shall be: 30

(a) To acquire and market apples and pears grown in New Zealand or imported into New Zealand:

(b) Except as provided in Part III of this Act, to determine the prices which the Board is to pay for such apples and pears. 35

(2) It shall be a function of the Board to report to the Minister from time to time concerning—

(a) Trends and prospects in overseas markets in respect of apples and pears:

(b) Movements in costs or prices, or other factors likely to prejudice the economic stability of the apple and pear growing industry. 40

(3) The Board shall have such other functions and such powers as are conferred or imposed upon it by this Act or otherwise howsoever.

5 (4) The Board shall have all such powers, rights, and authorities as may be reasonably necessary or expedient to enable it to carry out its functions.

Cf. 1948, No. 53, s. 10 (1)-(3), (4)

10 **10. Board to comply with general trade policy of the Government**—In the exercise of its functions and powers the Board shall comply with the general trade policy of the Government of New Zealand and shall comply with any general or specific directions given by the Minister to the Board pursuant to the policy of the Government in relation thereto.

15 Cf. 1948, No. 53, s. 10 (4)

11. General powers as to apples and pears—(1) Without limiting any of the powers conferred on the Board by this Act or otherwise howsoever, the Board shall have full authority to make and carry out such arrangements and give such directions as it thinks proper for any of the following purposes:

20 (a) For the handling, transport, and storage of all apples and pears acquired by the Board:

(b) For the shipment of any such apples and pears intended for export, on such terms and in such quantities as the Board thinks fit:

25 (c) For the insurance against loss of any apples and pears acquired by the Board:

(d) For the treatment for purposes of preservation or otherwise of apples and pears acquired by the Board and for the marketing and disposition of apples and pears treated as aforesaid:

30 (e) For furthering the sales of apples and pears in New Zealand or elsewhere, whether by advertising, experimental shipments, or otherwise howsoever:

35 (f) With the consent of the Minister, for the making of advances to growers from the Industry Account in respect of apples and pears not immediately available for acquisition by the Board:

40 (g) With the consent of the Minister, for the making and carrying out of agreements authorising the Board to act as agent, whether in New Zealand or elsewhere, for persons or bodies engaged in the production, marketing, or distribution of primary products:

- (h) For the manufacture of any product of apples and pears grown in New Zealand and acquired by the Board, with or without the admixture with any such product of any other substance, and for the handling, shipment, marketing, and disposition of any such product in New Zealand or elsewhere: 5
- (i) Generally for all such matters as are necessary for the exercise of the functions and powers of the Board.
- (2) The Board may, with the consent of the Minister of Finance, from time to time— 10
- (a) Subscribe for or otherwise acquire shares in any company incorporated in New Zealand or elsewhere and carrying on or proposing to carry on operations in New Zealand or elsewhere relating to the manufacture and marketing of any product of apples and pears grown in New Zealand; and 15
- (b) Advance any money to any such company; and
- (c) Give such guarantee, indemnity, or security, as the Board thinks fit to or for the benefit of any such company. 20
- Cf. 1948, No. 53, s. 11; 1954, No. 38, s. 5; 1960, No. 102, s. 2

- 12. Advisory and technical committees—**(1) The Board may from time to time appoint advisory or technical committees to advise the Board. 25
- (2) Every such committee may, in addition, furnish to the Board reports on any matter relating to the apple and pear growing industry or the production or marketing of apples and pears in respect of which the members of the committee have special knowledge or experience. 30
- (3) Any person may be appointed to be a member of any such committee, notwithstanding that he is not a member of the Board.
- (4) Every such committee shall be subject to the control of the Board, and shall carry out all directions, general or special, of the Board in relation to the committee or its affairs. 35
- (5) Subject to the provisions of this Act and of any regulations made under this Act, every such committee may regulate its own procedure. 40

Cf. 1948, No. 53, s. 9

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13. Power to deal with real and personal property, etc.—

(1) The Board may—

5 (a) Purchase, take on lease, rent, hire, or otherwise acquire such real and personal property as in the opinion of the Board are necessary for the performance of its functions:

(b) Sell, transfer, lease, hire, or otherwise dispose of any of its real or personal property:

10 (c) Take on lease, rent, or purchase houses or purchase sites and erect houses, whether within or outside New Zealand, for the use of its officers, or make advances, on such terms and conditions as it thinks fit, to its officers for the purpose of enabling those officers to purchase or erect houses, whether within
15 or outside New Zealand, for their own use.

(2) Where pursuant to paragraph (c) of subsection (1) of this section the Board takes on lease or rents any house or erects or purchases any house, it may let the house unfurnished or, if the house is situated elsewhere than in New Zealand,
20 furnish and let the house, to any officer of the Board for such term and at such rent and otherwise upon such terms and conditions as it thinks fit.

(3) For the purposes of this section the term "house" means any building or part of a building that is suitable for residen-
25 tial accommodation of any kind; and, except where the context otherwise requires, includes any land, outbuildings, or parts of buildings appurtenant thereto.

Cf. 1948, No. 53, s. 10 (3A), (3B), (3C); 1954, No. 38, s. 4 (1); 1959, No. 37, s. 3 (1)

30 **14. Appointment of officers and employees—**(1) The Board may appoint such officers and employees as it deems necessary for the efficient carrying out of its functions and powers under this Act, and may pay any such officers and employees such salaries and allowances as the Board from
35 time to time determines.

(2) The Board may make payments to, or subsidise, the National Provident Fund or any fund or scheme established with the approval of the Governor-General in Council for the purpose of providing superannuation or retiring allowances
40 for its officers and employees.

Cf. 1948, No. 53, s. 24

15. Performance of functions by agent on behalf of Board—

The Board may from time to time, with the consent of the Minister, arrange that any of its duties or functions, other than those under Part III of this Act, may be performed on its behalf, whether in New Zealand or elsewhere, by an agent appointed for the purpose. 5

Cf. 1948, No. 53, s. 25

16. Power to insure members—(1) The Board may from time to time enter into contracts of insurance insuring members of the Board or Authority or of any committee appointed by the Board under section 12 of this Act, and the deputies of any such members, against loss from personal accident arising out of and in the course of the exercise of the powers or duties of members, and may pay the premiums payable in respect of any such contracts. 10 15

(2) The Board may pay the net proceeds received by it under any such contract of insurance to the person affected or to his personal representatives, as the case may require.

Cf. 1948, No. 53, s. 10 (3D); 1959, No. 37, s. 3 (1)

17. Contracts of Board—(1) Any contract which, if made by private persons, must be by deed shall, if made by the Board, be in writing under the common seal of the Board. 20

(2) Any contract which, if made by private persons, must be signed by the parties to be charged therewith shall, if made by the Board, be either under the common seal of the Board or signed by a member or officer of the Board on behalf of and by authority of the Board. 25

(3) Any contract which, if made by private persons, may be made orally in the manner specified in subsection (1) of this section as in the case of a deed, or in the manner specified in subsection (2) of this section as in the case of a contract required to be in writing, or may be made orally by or on behalf of the Board by any member or officer of the Board acting by authority of the Board, but no oral contract shall be made for any sum exceeding \$400. 30 35

(4) The Board may by writing under its common seal empower any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand. Any instrument executed by such an attorney on behalf of the Board shall bind the Board, and if executed as a deed shall have the same effect as if it were under the common seal of the Board. 40

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of the Board shall be invalid by reason only that it was not made in manner provided by this section, if it was
5 made pursuant to a resolution of the Board or to give effect to a resolution of the Board in relation to contracts generally or in relation to that particular contract.

Cf. 1948, No. 53, s. 26

PART II

10

ACQUISITION OF APPLES AND PEARS

18. Apples and pears to which this Part of this Act applies—(1) This Part of this Act shall apply with respect to all apples and pears which are grown in New Zealand or imported into New Zealand and which may be sold for
15 human consumption.

(2) This Part of this Act shall apply only to fresh apples and pears whether or not they have been at any time chilled, frozen, or gassed, but shall not apply to any apples or pears that have been canned, dried, converted into jam, or sub-
20 jected to any form of processing.

Cf. 1948, No. 53, s. 12; 1951, No. 62, s. 2

19. Apples and pears to be purchased by Board—(1) Except as otherwise provided by this Act or in regulations made under this Act, all apples and pears to which this Part of this
25 Act applies shall be purchased by the Board at the prices fixed in accordance with the provisions of this Act.

(2) The Board may require that apples and pears, before being purchased by the Board, shall—

(a) Be harvested in such manner and at such times as the
30 Board may direct:

(b) Be packed and graded in accordance with such specifications as may—

(i) In respect of apples and pears intended by the Board to be sold or processed within New Zealand, be determined by the Board after consultation with the Fruitgrowers' Federation; or
35

(ii) In respect of apples and pears intended by the Board to be exported from New Zealand, be prescribed by the Director-General by notice in the
40 *Gazette*.

Cf. 1948, No. 53, s. 13 (1), (3), (4); 1951, No. 62, s. 3

20. Board may purchase apples and pears not up to grading standards—(1) The Board shall not be bound to purchase any apples or pears of a standard less than the lowest grade for the time being in force under or for the purposes of section 19 of this Act, but may purchase, on such terms and conditions as it may determine, any such apples or pears which are fit for human consumption. 5

(2) Any determination by the Board pursuant to subsection (1) of this section may be varied or revoked at any time by the Board, and may apply throughout New Zealand or in any specified district or districts and may apply to any specified class, grade, or description of apples or pears. 10

(3) Nothing in Part III of this Act shall apply to or in relation to apples and pears purchased pursuant to this section or to any amount paid for any such apples and pears. 15

Cf. 1948, No. 53, s. 23A; 1951, No. 62, s. 5

PART III

APPLE AND PEAR PRICES AUTHORITY

21. Apple and Pear Prices Authority—(1) There shall continue to be an authority to be called the Apple and Pear Prices Authority. 20

(2) The Authority, the members of which shall be appointed by the Governor-General on the recommendation of the Minister, shall consist of—

(a) One member, who shall be appointed as Chairman after agreement between the Minister and the Fruit-growers' Federation; and 25

(b) Two members, who shall be appointed on the nomination of the Fruitgrowers' Federation; and

(c) Two other members. 30

(3) The Authority is hereby declared to be the same authority as the authority of the same name existing immediately before the commencement of this Act and constituted under the Apple and Pear Marketing Act 1948.

Cf. 1948, No. 53, s. 18A (1)–(2); 1967, No. 140, s. 5 (1) 35

22. Term of office of members of Authority—(1) Except as otherwise provided by this Act, every member of the Authority shall be appointed for a term of 4 years, but may from time to time be reappointed.

(2) Notwithstanding anything to the contrary in this Act, every member of the Authority, unless he sooner vacates his office under section 24 of this Act, shall continue to hold office until his successor comes into office.

5 Cf. 1948, No. 53, s. 18B (1)-(2); 1967, No. 140, s. 5 (1)

23. Deputies of members of Authority—(1) In any case in which the Minister is satisfied that the Chairman or any member of the Authority is incapacitated by illness, absence, or other sufficient cause from performing the duties of his
10 office, the Minister may appoint a deputy to act for the Chairman or for that member during his incapacity.

(2) Any deputy appointed under this section to act for the Chairman shall be appointed after agreement between the Minister and the Fruitgrowers' Federation.

15 (3) Any deputy appointed under this section to act for any member appointed under paragraph (b) of subsection (2) of section 21 of this Act shall be appointed on the nomination of the Fruitgrowers' Federation.

(4) Any deputy appointed under this section shall, while
20 he acts as such, be deemed to be a member of the Authority, and any deputy acting for the Chairman shall have all the powers of the Chairman.

(5) No appointment of a deputy and no acts done by him
25 as such, and no act done by the Authority while any deputy is acting as such, shall be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

Cf. 1948, No. 53, s. 18c; 1967, No. 140, s. 5 (1)

24. Extraordinary vacancies—(1) Any member of the
30 Authority or any deputy of such a member may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his office by written notice given to the Minister.

35 (2) If any member of the authority dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(3) An extraordinary vacancy shall be filled in the same
40 manner in which the appointment to the vacant office was originally made.

(4) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

Cf. 1948, No. 53, s. 18D; 1967, No. 140, s. 5 (1)

25. Meetings of Authority—(1) Meetings of the Authority shall be held at such times and places as the Authority from time to time appoints. 5

(2) At all meetings of the Authority the presence of every member of the Authority entitled to be present, or his deputy, shall be necessary for the transaction of business. 10

(3) The Chairman shall preside at all meetings of the Authority at which he is present.

(4) All questions arising at any meeting of the Authority shall be decided by a majority of the valid votes recorded thereon. 15

(5) Subject to the provisions of this Act and of any regulations made under this Act, the Authority may regulate its procedure in such manner as it thinks fit.

Cf. 1948, No. 53, s. 18E; 1967, No. 140, s. 5 (1)

26. Function of Authority—(1) The general function of the Authority shall be to determine in each season, in accordance with this Part of this Act, the average price to be paid by the Board for apples and pears which are produced in New Zealand and which are acquired by the Board during that season. 20 25

(2) The Authority shall consult with the Minister before each occasion on which it fixes the average price under this Part of this Act.

Cf. 1948, No. 53, s. 18F; 1967, No. 140, s. 5 (1)

27. Determination of average price—(1) Not later than the last day of February in each season the Authority shall determine the average price to be paid by the Board for all apples and pears purchased by the Board from growers during that season. 30

(2) The average price for apples and pears shall be determined by the Authority as if the apples and pears— 35

(a) Had been grown in the Hawke's Bay or the Nelson district; and

(b) Were bare fruit ungraded and unpacked; and

- (c) Had been delivered by the grower to the receiving depot of the Board nearest to the orchard on which they were grown.
- 5 (3) In determining the average price, the Authority shall have regard to the following matters:
 - (a) The necessity in the public interest of maintaining the stability and efficiency of the apple and pear growing industry:
 - 10 (b) Movements in the costs of producing and marketing apples and pears:
 - (c) The amounts which apples and pears acquired by the Board, and products manufactured by the Board from any such apples and pears, are realising, market prospects for the season, and other marketing trends known to or anticipated by the Authority:
 - 15 (d) The state of the accounts of the Board:
 - (e) The current and future requirements of the Board for finance for capital expenditure or for other special purposes:
 - 20 (f) Any submissions made by the Board or the Fruit-growers' Federation:
 - (g) Any other matters considered by the Authority to be relevant.
- 25 (4) If, after the average price has been determined for any season, the Authority is of the opinion that the average price for that season should be increased, the Authority may at any time not later than the 30th day of November in that season, subject to the provisions of subsection (6) of this section, determine a new and increased average price for that season.
- 30 (5) The Authority may direct that any new average price determined under subsection (4) of this section shall have effect from such date during the season as the Authority specifies.
- (6) No average price determined under this section shall, 35 by more than 5 percent, exceed or be less than the maximum average price determined in respect of any period during the last preceding season.
- (7) Notification of any average price (including any increased average price determined by the Authority under sub- 40 section (4) of this section) determined by the Authority under this section shall be published by the Authority in the *Gazette*.

Cf. 1948, No. 53, s. 18G; 1967, No. 140, s. 5 (1)

28. Prices to be paid by the Board—(1) For the purposes of this section the term “average price pool” means the amount that would be payable by the Board if all apples and pears acquired by it from growers in a season (other than those acquired pursuant to section 20 of this Act) were acquired at the average price determined by the Authority in respect of that season. 5

(2) The prices to be paid by the Board to growers in respect of apples and pears which become the property of the Board shall be fixed by the Board in respect of each season in relation to the average price determined by the Authority. 10

(3) The Board may fix different prices in respect of different kinds, varieties, grades, qualities, or sizes of apples or pears, or by reason of any other special conditions or circumstances which in the opinion of the Board warrant the fixing of different prices, and may from time to time vary any such prices: 15

Provided that the Board may from time to time, with the prior approval of the Minister, fix different prices for apples or pears of the same kind or variety and of the same grade, quality, or size acquired by the Board under any special arrangement or subject to any special terms or conditions: 20

Provided also that, subject to the provisions of subsections (4) and (5) of this section, the total amount paid to growers under this section in respect of any season shall not exceed the average price pool for that season. 25

(4) In addition to the prices paid under the foregoing provisions of this section, the Board may pay to growers such amounts relating to the costs borne or incurred by growers in respect of apples and pears supplied to the Board as the Board may determine. Without limiting the generality of the foregoing provisions of this subsection, any such costs may include labour and other costs incurred as the result of special work done or arrangements made in respect of the picking, grading, packing, transport, or storage of apples and pears. 30 35

(5) Where apples and pears purchased by the Board are grown in districts other than Nelson or Hawke’s Bay, the Board may pay to the growers of the apples and pears, in addition to the prices fixed under the foregoing provisions of this section, such amounts in respect of any such apples and pears purchased by it as may be from time to time determined by the Board: 40

Provided that any amount paid under this subsection shall not, except with the prior approval of the Minister and subject to such conditions as he thinks fit to impose, exceed the amount of the cost of transportation which would have been incurred
5 if the apples and pears in respect of which the payment is made had been transported in the most economical manner from the Nelson district or the Hawke's Bay district (according to which of those districts is more convenient of access) to the principal town in the district in which the apples and
10 pears were grown.

Cf. 1948, No. 53, s. 18H; 1967, No. 140, s. 5 (1)

PART IV

FINANCIAL PROVISIONS

29. **Apple and Pear Industry Account**—(1) For the purposes
15 of this Act there shall be established at the Reserve Bank of New Zealand an account to be known as the Apple and Pear Industry Account which shall be the same account as that existing under the same name at the commencement of this Act.

20 (2) The Board may from time to time open at the Reserve Bank of New Zealand or at any branch or agency of the Bank of New Zealand (whether in New Zealand or elsewhere) such imprest or other subsidiary accounts as it may deem necessary or desirable for the exercise of its functions or
25 powers.

(3) Every account under this section shall be operated on only by cheque or other instrument signed by such person or persons as the Board appoints from time to time for that purpose.

30 Cf. 1948, No. 53, ss. 19 (1)–(2), 20; 1962, No. 57, s. 2

30. **Money payable into and out of the Industry Account**—

(1) There shall from time to time be payable into the Industry Account all money derived from the operations of the Board or payable to the Board and any other money that may be
35 lawfully payable to the Account.

(2) The Board may from time to time out of the Industry Account—

(a) Pay all money payable by the Board or the Authority,
40 and all costs, charges, and expenses whatsoever incurred by the Board or the Authority in the performance of their functions and the exercise of their powers and authorities:

- (b) Pay any money which the Board and the Minister agree shall be payable out of the Account for any purpose which they deem to be of benefit to the apple and pear growing industry.

Cf. 1948, No. 53, ss. 18A (3), 21, 22; 1968, No. 68, s. 3 (1) 5

31. Borrowing powers of Board—(1) The Reserve Bank may grant to the Board, and the Board may receive from the Reserve Bank, accommodation by way of overdraft in aid of the Industry Account, and that account may be overdrawn accordingly: 10

Provided that the amount of the accommodation by way of overdraft shall not at any time, except with the prior consent of the Minister of Finance, exceed in amount the total purchase price which has been paid by the Board for apples and pears which it has acquired under this Act and which are for the time being unsold or in respect of which no part of the selling price has been received by the Board, together with the sum of the amounts paid for freights, storage, insurance, and other charges (including processing costs) in connection with any such apples and pears: 15 20

Provided also that the Reserve Bank shall be entitled to accept a certificate in writing signed by the Chairman of the Board, or some person duly authorised by him, as conclusive evidence of the amount of the aforesaid purchase price, freights, storage, insurance, and other charges. 25

(2) The grant by the Reserve Bank of accommodation by way of overdraft as aforesaid shall not, for the purposes of paragraph (d) of subsection (1) of section 9 of the Reserve Bank of New Zealand Act 1964 be deemed to be the lending of money without security. 30

(3) With the approval of the Minister of Finance and in accordance with such conditions as he may specify from time to time, the Board may receive deposits, at interest, to be applied for the purposes of the Board.

(4) Except as otherwise provided by this section, the Board shall not borrow any money or mortgage or charge any of its property without the prior consent in writing of the Minister of Finance. 35

Cf. 1948, No. 53, ss. 19 (3)–(4), 28

32. Industry Reserve Account and disposition of annual profit—(1) For the purposes of this Act the Board shall open in its books of account an account to be known as the Industry Reserve Account which shall be the same account as the 40

Industry Reserve Fund Account existing immediately before the commencement of this Act and opened pursuant to section 22A of the Apple and Pear Marketing Act 1948.

(2) The Reserve Account shall comprise—

5 (a) The amount in the Reserve Account accumulated by the Board and for the time being retained by it under this section:

(b) So much of the Board's annual profit, as shown in the books of account of the Board, as is, in each year, transferred to the Reserve Account in accordance with paragraph (b) of subsection (5) of this section.

(3) Where in any year the books of account of the Board show that it has incurred a loss, the amount of the loss shall be deducted from the amount in the Reserve Account.

15 (4) All amounts available for transfer to the Reserve Account shall, subject to the provisions of this section, be transferred to that Account as soon as practicable after the end of each season.

(5) With respect to the disposition of the amount shown in the books of account of the Board as its annual profit, the following provisions shall apply:

20 (a) So much of the annual profit as the Board thinks fit shall be paid to growers from whom the Board has purchased apples and pears during the season in respect of which the profit was made:

25 Provided that, where in that season apples or pears have been acquired by the Board under any special arrangement or subject to any special terms or conditions approved by the Minister pursuant to the first proviso to subsection (3) of section 28 of this Act, the Board may, in its discretion, in making payments to growers pursuant to this paragraph take account of apples and pears so purchased and make such payments only to the growers of those apples and pears or make to those growers greater payments, in respect of those apples and pears, than those made to the growers of other apples and pears purchased by the Board:

30
35
40 Provided also that, except with the consent of the Minister, the amount paid under this paragraph shall not exceed 50 percent of the annual profit:

(b) So much of the annual profit as is not paid to growers under paragraph (a) of this subsection shall be transferred to the Reserve Account.

(6) The amounts to be paid to individual growers under this section shall be fixed by the Board in its discretion and different amounts may be fixed in respect of different varieties of apples or pears, or in respect of different grades, qualities, or sizes of the same variety of apples or pears, or by reason of any other special conditions or circumstances that in the opinion of the Board warrant the fixing of different amounts. 5

Cf. 1948, No. 43, s. 22A; 1954, No. 38, s. 6 (1); 1967, No. 140, s. 6

33. Guarantee of prices—(1) The prices which the Board fixes and the payments authorised to be made under section 28 of this Act shall be duly paid as required by this Act. 10

(2) The Minister of Finance is hereby empowered, for the purpose of giving effect to subsection (1) of this section,—

(a) To consent in writing under the first proviso to subsection (1) of section 31 of this Act to the amount of the overdraft with the Reserve Bank of New Zealand being increased beyond the limit therein described: 15

(b) To consent under subsection (4) of section 31 of this Act to the borrowing of such sums as may be necessary and the mortgaging or charging of any of the property of the Board: 20

(c) To advance to the Board out of the Public Account such sums as may be necessary, which sums the Minister of Finance is hereby authorised to advance without further appropriation than this section. 25

(3) In any case where for the purposes of this section the Minister of Finance consents to the borrowing by the Board of any sums either by way of overdraft from the Reserve Bank or otherwise, the Minister of Finance may give such guarantees as he thinks fit in respect of the amounts borrowed by the Board. 30

(4) If at any time the Minister of Finance is satisfied that the Board has available money in excess of the amounts reasonably required for the carrying out of the functions of the Board, he may require the whole or any part of the excess to be repaid to the Public Account in reduction of any sums advanced to the Board out of the Public Account, and the sum so required shall be forthwith paid by the Board to the Public Account. 35 40

Cf. 1948, No. 53, s. 23; 1954, No. 38, s. 6 (3); 1967, No. 140, s. 7

34. Powers of investment—Any money of the Board which is available for investment may be invested in the manner following:

- 5 (a) In New Zealand Government securities; or
(b) On deposit in the Bank of New Zealand; or
(c) In any other securities that may from time to time be authorised by the Minister of Finance.

Cf. 1948, No. 53, s. 19 (5)

35. Remuneration and travelling expenses of members of Board, Authority, and committees—(1) The Board, the Authority, and advisory or technical committees appointed by the Board are hereby declared to be statutory Boards within the meaning of the Fees and Travelling Allowances Act 1951.

- 15 (2) The Board shall pay to its members and those of the Authority and to the members of any advisory or technical committee appointed by the Board remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Cf. 1948, No. 53, s. 29; 1951, No. 79, s. 10 (1); 1968, No. 68, s. 3 (2)

36. Unauthorised expenditure by Board—The Board may in any financial year out of its income available for general purposes expend for purposes not authorised by any Act or law for the time being in force any sum or sums not amounting in the aggregate to more than \$500.

- 30 Cf. 1948, No. 53, s. 29A; 1950, No. 61, s. 5; 1954, No. 38, s. 7

37. Audit of accounts—The accounts of the Board shall be audited by the Audit Office, which for that purpose shall have all such powers as it has under the Public Revenues Act 1953 in respect of public money and public stores and the audit of local authorities' accounts.

Cf. 1948, No. 53, s. 27

38. Exemption from taxation—Subject to section 154A of the Land and Income Tax Act 1954, the Board shall be exempt from land tax and income tax.

Cf. 1948, No. 53, s. 30

PART V

5

MISCELLANEOUS PROVISIONS

39. Annual report and accounts to be presented to Parliament—(1) The Board shall, as soon as practicable after the 30th day of November in each year, furnish to the Minister a report of its proceedings and operations for the year ended 10 on that date together with a copy of its accounts for that year and the report of the Audit Office on those accounts.

(2) A copy of the report and accounts of the Board, together with a copy of the report of the Audit Office on the accounts, shall be laid before Parliament within 28 days after the same 15 has been furnished to the Minister if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the commencement of the next ensuing session.

Cf. 1948, No. 53, s. 31

40. Powers of Inspectors—(1) Subject in the case of a 20 dwellinghouse to subsection (3) of this section, any Inspector appointed pursuant to section 14 of this Act may at times reasonable in the circumstances, upon production (if so required) of due evidence of his appointment, enter into and inspect any premises, land, vessel, aircraft, vehicle, or place 25 where he has reasonable ground to believe that any apples or pears are being held, stored, or sold in contravention of, or for the purposes of contravening, any of the provisions of section 41 or section 43 of this Act or of regulations made under this Act. 30

(2) An Inspector in the exercise of the powers set out in subsection (1) of this section may—

- (a) Inspect fruit and demand such information or explanations as to the source or destination of the apples or pears as he considers necessary: 35
- (b) Open cases and other receptacles.

(3) An Inspector shall not enter any dwellinghouse under the powers conferred by this section.

- 41. Unlawful sale of apples or pears—**(1) Subject to subsection (2) of this section and to section 42 of this Act and
5 except as otherwise provided in regulations made under this Act, every person commits an offence against this Act who—
- (a) Being a grower, knowingly sells to any person other than the Board any apples or pears grown by him which the Board is obliged by subsection (1) of section
10 19 of this Act to purchase; or
 - (b) Not being the Board, knowingly sells to any person other than the Board any apples or pears which have not previously been purchased from the Board by the person who effects the sale or by some other person.
- 15 (2) It shall be a good defence to a prosecution for selling any apples or pears contrary to paragraph (a) or paragraph (b) of subsection (1) of this section if the defendant proves that the apples or pears were not intended for human consumption.
- 20 (3) It shall be a good defence to a prosecution for selling any apples or pears contrary to paragraph (b) of subsection (1) of this section if the defendant proves that the apples or pears were grown by him and that the Board was not obliged by subsection (1) of section 19 of this Act to purchase the
25 apples or pears.

Cf. 1948, No. 53, s. 13 (2)

- 42. Permitted sales to consumers—**(1) A grower may sell apples or pears or both to any consumer if—
- 30 (a) The quantity of such fruit sold to any consumer at any one time does not exceed 2 bushels; and
 - (b) Each sale is made directly by the grower or a member of his family or an employee of the grower to the consumer; and
 - 35 (c) Delivery is effected by the grower either—
 - (i) At the orchard of the grower at which the fruit is grown; or
 - (ii) At premises of the consumer which are not more than 30 miles by the nearest practicable route from the orchard at which the fruit is grown; or
 - 40 (iii) By delivering the fruit to the New Zealand Government Railways Department or to a carrier within the meaning of the Carriers Act 1948 for the purpose of transmission to the consumer; and

- (d) Where delivery is being effected by the grower pursuant to subparagraph (ii) or subparagraph (iii) of paragraph (c) of this subsection, the name and address or registered mark of the grower and the name and address of the consumer shall be clearly shown, before the fruit leaves the orchard, on the container in which the fruit is packed, on a label attached to that container, or on a waybill, consignment note, or delivery docket which accompanies the fruit. 5
- (2) For the purposes of subsection (1) of this section and of any prosecution under section 41 of this Act,— 10
- (a) A consumer is a person who purchases apples or pears or both for the use of himself or his family and not for resale or for the manufacture of any product for sale: 15
- (b) Every person (other than a corporation) shall be deemed to be a consumer until the contrary is proved:
- (c) No grower shall, in the absence of any indication that a person is not a consumer, be obliged to satisfy himself that any person is a consumer. 20
- Cf. S.R. 1949/159, regs. 3 (1), 6 (a); S.R. 1954/24, reg. 2

43. Export of apples and pears—Every person commits an offence against this Act who, except where the Director-General otherwise approves, exports, in the course of or for the purpose of sale, any apples or pears which are not certified by the Director-General as being packed and graded in accordance with such specifications as may be prescribed by the Director-General by notice in the *Gazette*. 30

44. Miscellaneous offences—Every person commits an offence against this Act who—

(a) Without reasonable excuse (the proof of which shall lie on him) fails to comply with any requirement of the Board under subsection (2) of section 19 of this Act or with any direction given by the Board under this Act: 35

(b) Except on the grounds that he would incriminate himself, or his spouse or that he would be disclosing information that he could not be compelled to dis- 40

- close in any proceeding within the meaning of the Evidence Act 1908, refuses to furnish any information demanded by the Board or any duly appointed employee or officer of the Board for the purposes of this Act or of any regulations made under this Act:
- 5 (c) With intent to deceive, makes any false or misleading statement or any material omission in any communication with or application or return to the Board or to any duly authorised employee or officer of the Board (whether in writing or otherwise) for the purposes of this Act or of any regulations made under this Act:
- 10 (d) Wilfully obstructs, hinders, or resists any Inspector appointed pursuant to section 14 of this Act in the execution of any of the powers conferred on the Inspector by section 40 of this Act.
- 15

Cf. 1948, No. 53, s. 32 (1)

- 45. Penalties**—Every person who commits an offence against this Act is liable on summary conviction to a fine not exceeding \$400, in the case of an individual and, in the case of a company or other corporation, to a fine not exceeding \$2,000.
- 20

Cf. 1948, No. 53, s. 32 (2)

- 46. Regulations**—The Governor-General may from time to time, by Order in Council, in accordance with recommendations made by the Minister, make regulations for all or any of the following purposes:
- 25 (a) Prescribing conditions relating to the delivery of apples and pears sold by growers to the Board:
- (b) Prescribing or providing for exceptions to subsection (1) of section 19 of this Act:
- 30 (c) Prescribing the circumstances in which the Board may consent to or authorise the sale of apples and pears to persons other than the Board, and the duration, terms, and conditions upon which such consent or authorisation may be granted or revoked:
- 35 (d) Permitting, subject to such conditions as may be prescribed, the sale of apples and pears notwithstanding the provisions of subsection (1) of section 41 of this Act:

- (e) Regulating the distribution and sale of apples and pears in New Zealand and controlling the carriage of apples and pears sold otherwise than in accordance with the terms of this Act or any regulations made under this Act: 5
 - (f) Providing for returns to be made and records to be kept and information to be supplied to the Board or its authorised officers or agents by growers, retailers, and persons engaged in the business of carrying apples and pears or in any business concerned with the handling of apples and pears intended for sale: 10
 - (g) Exempting or providing for exemptions from any specified provision of any regulations made under this Act:
 - (h) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amount of the fines that may be imposed in respect of such offences, which fines shall be an amount not exceeding \$400 in the case of an individual and, in the case of a company or other corporation, an amount not exceeding \$2,000: 15 20
 - (i) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act or for its due administration. 25
- Cf. 1948, No. 53, s. 33; 1951, No. 62, s. 6 (1)

47. Repeals and revocations—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) The Apple and Pear Marketing Regulations 1949 are hereby amended by revoking paragraph (a) of regulation 6 (as substituted by regulation 2 of the Apple and Pear Marketing Regulations 1949, Amendment No. 2). 30

48. Others Acts not affected—Except so far as may be expressly provided in this Act, nothing in this Act shall be so construed as to limit or affect in any way the provisions of any other Act. 35

SCHEDULE

ENACTMENTS REPEALED Section 47 (1)

- 1948, No. 53—The Apple and Pear Marketing Act 1948. (1957 Reprint, Vol. 1, p. 247.)
- 1950, No. 61—The Apple and Pear Marketing Amendment Act 1950. (1957 Reprint, Vol. 1, p. 266.)
- 1951, No. 62—The Apple and Pear Marketing Amendment Act 1951. (1957 Reprint, Vol. 1, p. 267.)
- 1951, No. 79—The Fees and Travelling Allowances Act 1951: So much of the First Schedule as relates to the Apple and Pear Marketing Board and so much of the Second Schedule as relates to the Apple and Pear Marketing Act 1948. (1957 Reprint, Vol. 4, p. 853.)
- 1954, No. 38—The Apple and Pear Marketing Amendment Act 1954. (1957 Reprint, Vol. 1, p. 267.)
- 1959, No. 37—The Apple and Pear Marketing Amendment Act 1959.
- 1960, No. 102—The Apple and Pear Marketing Amendment Act 1960.
- 1962, No. 57—The Apple and Pear Marketing Amendment Act 1962.
- 1967, No. 140—The Apple and Pear Marketing Amendment Act 1967.
- 1968, No. 68—The Apple and Pear Marketing Amendment Act 1968.