

Hop Industry Restructuring Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Hop Industry Restructuring Bill and recommends that it be passed with the amendments shown.

Introduction

The aim of the Hop Industry Restructuring Bill is to restructure the New Zealand Hop Marketing Board into a co-operative company owned by hop producers and to facilitate the export and acquisition of hops and hop products.

The New Zealand Hop Marketing Board was established under the Hop Marketing Regulations 1939. These regulations made the board the mandatory agent of growers in the sale (including export) of all hops produced in New Zealand. The bill removes that compulsory element and gives growers the commercial choice of marketer and exporter.

The regulations are considered out of date and are out of step with the international trading environment for hops and hop products, in which the board operates. The board supports the deregulation of the industry as set out in the bill.

This legislation follows similar deregulation measures already passed in respect of the apple and pear and the dairy industries.

The bill has been carried over from the 46th Parliament following introduction.

Co-operative company

The bill proposes that before 1 August 2002 (the restructuring day) the board must apply to the Registrar of Companies to be registered as a co-operative company. The shares will be allocated free of duties or tax to producers in proportion to their production. The new company is the same legal entity as the board and assumes all its legal powers and obligations (particularly in the area of contracts, both commercial and employment). We support the co-operative nature of the industry and recommend that the board address the issue of subsequent shareholding changes to avoid undermining the co-operative ownership structure.

Change in dates

The proposed restructuring day is no longer possible. In the only submission we received, the board has asked that all relevant dates in the bill be amended to the same dates in 2003. We agree and recommend that the restructuring day be changed to 1 August 2003 (the first day of the board's 2003/04 financial year) and that the dates in the bill be consequentially changed from being in 2002 to being in 2003.

Restructuring funding

The board has sought funding support for the restructuring process because of the significant legal costs. Being a small industry these costs, approximately \$26,500, will have a substantial financial impact.

We do not accept the board's request for funding support. The one-off costs are incurred to remove or change regulatory controls and were spent at the board's discretion. Other primary industries such as dairy, pipfruit and kiwifruit, have paid the restructuring expenses of their producer boards.

Appendix

Committee process

The Hop Industry Restructuring Bill was referred to the committee on 1 October 2002. The closing date for submissions was 11 November 2002. We received and considered one written submission. Consideration took 38 minutes.

We received advice from the Ministry of Agriculture and Forestry.

Committee membership

Hon David Carter (Chairperson)

Janet Mackey (Deputy Chairperson)

Dr Ashraf Choudhary

Clayton Cosgrove

Gerrard Eckhoff

Ian Ewen-Street

Phil Heatley

Hon Damien O'Connor

R Doug Woolerton

Hon Jim Sutton

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Hop Industry Restructuring Act **2002**.

Part 1

Preliminary provisions

2 Commencement

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- (1) Sections 12 and 13 come into force on **1 August (2002) 2003**.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

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- (a) to convert the New Zealand Hop Marketing Board into a co-operative company; and
- (b) to remove the regulatory controls on the sale and export of hops by—
 - (i) repealing the Agriculture (Emergency Powers) Act 1934 and the Marketing Act 1936; and
 - (ii) revoking the Hop Marketing Regulations 1939.

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4 Interpretation

In this Act, unless the context otherwise requires,—

Board means the New Zealand Hop Marketing Board established by the Hop Marketing Regulations 1939

chairperson means the person who held office as the chairperson of the Board immediately before the restructuring day 5

company means the company deemed to be registered under the Companies Act 1993 and the Co-operative Companies Act 1996 with the name New Zealand Hop Marketers Limited 10

hop plant means the plant with the scientific name *Humulus lupulus*

hops means the fruit of hop plants that are grown and produced within New Zealand

liabilities means liabilities, debts, charges, duties, and obligations of every description (whether present or future, whether actual or contingent, and whether payable, to be observed, or performed in New Zealand or elsewhere) 15

producer means a person—

- (a) who has signed a Hop Supplier Agreement with the Board as at **31 July (2002) 2003**; and 20
- (b) who has supplied hops from the (2002) 2003 harvesting season

property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and, without limitation, includes— 25

- (a) choses in action or money;
- (b) goodwill;
- (c) any copyright, patent, registered design, trademark, know-how, service marks, trade secrets, or other intellectual or industrial property and any applications pending for patents, trademarks, registered designs, and other intellectual or industrial property: 30
- (d) rights, interests, claims of every kind in, or to, property— 35
 - (i) whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise; and
 - (ii) whether liquidated or unliquidated, actual, contingent, or prospective 40

restructuring day means **1 August (2002) 2003**

rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective.

5 Act binds the Crown

This Act binds the Crown.

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Part 2

Restructuring of Board and other matters

Restructuring of Board

6 Board must apply to register as company

(1) Before the restructuring day, the Board must apply to the Registrar of Companies to be registered— 10

- (a) as a company under the Companies Act 1993; and
- (b) as a co-operative company under the Co-operative Companies Act 1996.

(2) The application must comply with section 12 of the Companies Act 1993, section 7 of the Co-operative Companies Act 1996, and section 7 of this Act, except that— 15

- (a) the Board may apply on behalf of the persons who are to receive the shares in the company:
- (b) 2 Board members may sign the application and any other documents required to accompany it: 20
- (c) the requirements of section 12(1)(d)(i) of the Companies Act 1993 regarding the signature of every person named as a shareholder do not apply if the Board has made all reasonable efforts to obtain the signatures of all producers. 25

(3) A person who is named as a shareholder in the document required by section 12(1)(d)(i) of the Companies Act 1993 must be a producer.

Compare: 1999 No 95 s 8

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7 Basis for allocation of shares in company

(1) Shares in the company must be allocated to all producers.

(2) The shares to be allocated to a producer must be in the same proportion as the volume of hops produced by the producer in the period of 5 years before the restructuring day, bears to the total volume of hops produced by all producers in that period. 35

8 Conversion of Board into company

- (1) On the restructuring day,—
- (a) the Board is deemed to be a company registered under the Companies Act 1993 and the Co-operative Companies Act 1996 with the name New Zealand Hop Market-ers Limited; and 5
 - (b) the Registrar of Companies must issue certificates of registration for the company; and
 - (c) shares must be issued to producers in accordance with the application under the Companies Act 1993. 10
- (2) The certificates of registration are conclusive evidence that the company was, on the restructuring day, registered as a company under the Companies Act 1993 and the Co-operative Companies Act 1996. 15
- Compare: 1999 No 95 s 20

9 Effect of registration as company

- (1) The company registered is the same body corporate as the Board.
- (2) The deemed registration of the company does not—
- (a) create a new legal entity; or 20
 - (b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity.
- (3) The **Schedule** applies to the conversion of the company. 25
- Compare: 1999 No 95 s 21

10 Final report of Board

- (1) As soon as reasonably practicable after the restructuring day, the chairperson must arrange for a final report of the Board to be completed.
- (2) The report must— 30
- (a) contain audited financial statements and an annual report for the financial year ending on **31 July (2002) 2003**; and
 - (b) comply with regulations 18 and 19 of the Hop Market-ing Regulations 1939 as if those regulations had not 35
been revoked by this Act.

- (3) The chairperson must send a copy of the report to every producer.

Compare: 1999 No 95 s 22

Other matters

- 11 Taxation** 5
- (1) The issue by the company of shares on the restructuring day to a person who was a producer on **31 July (2002) 2003**—
- (a) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968; and
- (b) is not a dividend derived by the person for the purposes of the Income Tax Act 1994; and 10
- (c) is not otherwise gross income of the person for the purposes of the Income Tax Act 1994.
- (2) For the purposes of the Income Tax Act 1994, if the company issues shares on the restructuring day to a person who was a producer on **31 July (2002) 2003**, the person must be treated as having— 15
- (a) held those shares at all times before the restructuring day; and
- (b) subject to section OD 5(5) of the Income Tax Act 1994, held any voting interest or market value interest attributable to those shares at all times before the restructuring day. 20
- (3) For the purposes of the definition of **available subscribed capital** in section OB1 of the Income Tax Act 1994, the company— 25
- (a) must be treated as having received on the restructuring day an amount of \$160,000 for the issue of ordinary shares on the restructuring day to producers; and
- (b) must not be treated as having received any other amount of consideration for the issue of shares to producers on the restructuring day. 30

Compare: 1999 No 95 s 23(1)–(3)

- 12 Consequential amendments**
- (1) The First Schedule of the Official Information Act 1982 (1982 No 156) is amended by omitting the item relating to the New Zealand Hop Marketing Board. 35
- (2) Section 8 of the Finance Act 1941 (1941 No 1) is repealed.

13 Repeals and revocation

- (1) The following Acts are repealed:
 - (a) Agriculture (Emergency Powers) Act 1934 (1934 No 34):
 - (b) Marketing Act 1936 (1936 No 5). 5
 - (2) The Hop Marketing Regulations 1939 (SR 1939/96) are revoked.
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Schedule 1

s 9(3)

Provisions relating to restructuring of Board

- 1 Consequential provisions on restructuring as company**
- (1) Without limiting the generality of **section 9**, the following provisions have effect on and after the restructuring day: 5
- (a) a reference (whether express or implied) to the Board in any instrument must be read and construed as a reference to the company: 5
- (b) all money payable to the Board is payable to the company: 10
- (c) proceedings that could have been commenced or continued by or against the Board before its conversion may be commenced or continued by or against the company: 10
- (d) the deemed registration of the company does not affect any rights, interests, liabilities, or obligations existing immediately before the conversion of the Board: 15
- (e) all transactions entered into by, and acts of, the Board before its conversion must be treated as having been entered into by, or to be those of the company, at the time when they were entered into or performed by the Board: 20
- (f) all contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether or not in writing) entered into by, made by, given to or by, or addressed to the Board (whether alone or with any other person) existing immediately before the restructuring day are, to the extent that they were previously binding on and enforceable by, against, or in favour of the Board, binding on and enforceable by, against, or in favour of the company. 25 30
- (2) **Subclause (1)(f)** applies as if the company, instead of the Board, had been the person by whom the contract, agreement, conveyance, deed, lease, instrument, or undertaking was entered into, made, given, or addressed (as the case may be). 35
- 2 Certain matters not affected by transfer to company**
- Nothing effected or authorised by this Act—
- (a) must be regarded as placing the Board or the company, or any other person, in breach of contract or confidence 40

- or as otherwise making any of them liable of a civil wrong; or
- (b) must be regarded as giving rise to a right for any person to terminate or cancel a contract or arrangement, or to accelerate the performance of any obligation; or 5
- (c) must be regarded as placing the Board or the company, or any other person, in breach of an enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment or transfer of property or the disclosure of information; or 10
- (d) releases a surety wholly or in part from any obligation; or
- (e) invalidates or discharges any contract.
- 3 Initial directors of company**
- (1) The initial directors of the company are the existing members of the Board who consent to be directors of the company. 15
- (2) The term of office of an initial director expires on the date on which the director's term on the Board would have expired had the Board not converted into the company.
- 4 Employees of Board** 20
- (1) Despite any other provision of this Act,—
- (a) on the restructuring day every person who is employed by the Board must be treated as having transferred to the company; and
- (b) for the purposes of every enactment, award, determination, contract, or agreement, the person's transfer from the Board to the company is insufficient to break the person's employment agreement. 25
- (2) The terms and conditions of employment of a transferred employee with the company on the restructuring day (and after that until varied) are identical to the terms and conditions of his or her employment with the Board immediately before the restructuring day and are capable of variation in the same manner. 30
- (3) A transferred employee is not entitled to receive any payment or other benefit solely because the person has, by virtue of this Act, ceased to be an employee of the Board and become an employee of the company. 35

Compare: 1999 No 95 Schedule cls 1–3, 5

Hop Industry Restructuring

Legislative history

14 March 2002

Introduction (Bill 206-1)

1 October 2002

First reading and referral to Primary Production Committee
