

## PRODUCER BOARD ACTS AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill is intended to be split into 2 Bills, a Primary Products Marketing Amendment Bill and an Apple and Pear Marketing Amendment Bill.

*Clause 1* relates to the Bill's Short Title.

### PART I

#### AMENDMENTS TO PRIMARY PRODUCTS MARKETING ACT 1953

*Clause 2* provides that *Part I* of the Bill is to be read together with the Primary Products Marketing Act 1953 ("the principal Act").

*Clause 3* repeals section 3 (4) of the principal Act, which requires Marketing Authorities to include at least 1 member representing the interests of consumers.

*Clause 4* replaces the present section 5 of the principal Act, which relates to the nature and powers of Marketing Authorities, with 2 new sections. *New section 5* continues the present status of Marketing Authorities as bodies corporate. *New section 5A* relates to the powers of Marketing Authorities.

At present, the powers of a Marketing Authority are determined by the regulations that establish it. In future, a Marketing Authority will have the powers of a natural person (like the large producer boards), except to the extent that the regulations that establish it limit those powers or confer additional powers.

Marketing Authorities will, like the large producer boards, be required to limit the exercise of their powers, by using them only for performing their functions and entering into certain financial transactions.

*Clause 5* makes amendments consequential on *clause 4*.

*Clause 6* repeals section 6 of the principal Act, which relates to contracts entered into by Marketing Authorities, and replaces it with a section that, by allowing Marketing Authorities to be bound by written or oral contracts entered into with their express or implied authority, enables them to operate with the flexibility of other commercial organisations.

*Clause 7* repeals section 10 of the principal Act, which imposes limitations on the powers of Marketing Authorities to borrow, and empowers the Minister of Finance to lend money to, and give guarantees, indemnities, and securities in respect of borrowings by, Marketing Authorities.

*Clause 8* repeals section 13 of the principal Act, which imposes limitations on the powers of a Marketing Authority to invest money.

## PART II

### AMENDMENTS TO APPLE AND PEAR MARKETING ACT 1971

*Clause 9* provides that *Part II* is to be read with the Apple and Pear Marketing Act 1971 (“the principal Act”). *Clauses 10, 13, 14, 16 to 22, and 28 to 33* are to come into force on 1 January 1994. The rest of the Part is to come into force on assent.

*Clause 10*, which comes into force on 1 January 1994, alters the constitution of the New Zealand Apple and Pear Marketing Board (“the Board”).

At present the Board comprises 4 members nominated by the New Zealand Fruitgrowers Federation (“the Federation”), and 2 Government members whose functions include representing the interests of consumers.

In future the members will be called directors. There will continue to be 4 directors nominated by the Federation; but the 2 Government members will be replaced by 3 directors appointed for their commercial expertise on the nomination of the Board itself.

*Clause 11* amends section 3A of the principal Act (which gives the Board the powers of a natural person) so as to put beyond doubt the Board’s powers to enter into certain kinds of commercial transaction. The amendment is in the same form as an amendment made to the Dairy Board Act 1961 in 1992.

*Clause 12* exempts certain actions of the Board from the application of Part II of the Commerce Act 1986. The clause is effectively retroactive to 1 October 1992.

*Clause 13* amends section 8 of the principal Act so as to give the Board additional ways in which it can pass a resolution. At present it must do so at a meeting, or by unanimous assent by letter or telegram. It will now also be able to do so by unanimous electronic message, facsimile message, or telex, or by a majority decision taken in the course of a telephone conference.

At least 4 directors must participate in a telephone conference, and all reasonable efforts must have been made to enable every director to participate in the conference.

*Clause 14*, which comes into force on 1 January 1994, amends section 9 of the principal Act so as to limit the Board’s principal function to the acquisition and marketing of apples and pears for export. This is one of several amendments that together have the effect of deregulating the local market for apples and pears as from 1 January 1994.

*Clause 15* inserts into the principal Act a new *section 11A*, giving the Board the ability to delegate any of its powers.

*Clause 16*, which comes into force on 1 January 1994, inserts a new *Part IA* into the principal Act.

The new *section 17A* empowers the Board to establish various standards of acceptability for export for apples and pears. (These standards will be used to determine whether the Board is obliged to acquire apples and pears submitted to it for export.)

The new *section 17B* requires the Board to notify growers of export fruit of the export standards established.

*Clause 17*, which comes into force on 1 January 1994, replaces the present Part II of the principal Act (which relates to the purchase of apples and pears by the Board) with a new Part.

The new *section 18A* provides for the Board to notify times and places for the submission of export apples and pears for acquisition by the Board. At those

times and places, growers may submit their fruit, together with a “submit-note” stating its kind, variety, grade, quantity, count, etc.

The new *section 18B* requires the Board to acquire all apples and pears properly submitted to it that comply with the appropriate export standards.

*Clauses 18 to 22*, which come into force on 1 January 1994, amend sections 27AA (which requires the Board to pay the appropriate prices for the apples and pears it acquires), 31 (which relates to the Board’s power to impose levies on apples and pears), 31B (which relates to the compulsory hail insurance scheme), 32B (which relates to the Board’s power to impose a capital charge), and 33 (which relates to the disposition of the Board’s seasonal profit) so as to reflect the new acquisition process.

*Clause 18* is not intended to change present payment procedures.

*Clause 19*, however, has the additional effect that in future only 1 levy will be paid to the Board, and it will be paid on export apples and pears only. It will be able to be imposed at differing rates (including a zero rate) on fruit of different kinds, varieties, and regional origins.

*Clause 20*, as well as reflecting the new acquisition arrangements, exempts the Board’s compulsory hail insurance scheme from the requirement under the Insurance Companies’ Deposits Act 1953 to lodge a deposit with the Public Trustee, and requires the Public Trustee to refund to the Board the deposit at present lodged by the Board. In future, it will apply only to export apples and pears.

*Clause 21* is not intended to alter present procedures relating to the capital charge, beyond limiting its imposition to export apples and pears.

*Clause 22* is not intended to alter the system for dealing with the Board’s seasonal profit, beyond limiting distributions to the growers of export apples and pears.

*Clause 23* requires the Board to comply with standards under the Financial Reporting Bill at present before Parliament. If no standard applicable to the Board is in force, the Board is to comply with generally accepted accounting practice.

*Clause 24* substitutes a new section for section 38 of the principal Act (which relates to the audit of the Board’s accounts and financial statements).

At present the Audit Office audits the Board’s accounts and statements. In future, the Board will appoint its own auditor if it gains the approval of growers at an annual general meeting.

*Clause 25* amends section 38A of the principal Act (which relates to the Board’s annual report and statements). In future the Board will have to report on the exercise of its statutory powers, and provide a statement of the total fees paid to its directors, and the directors of its subsidiaries.

Also, the Board must give any export grower who asks for them, without charge, copies of its most recent reports and statements. For that purpose, the Board must make sure it has an ample supply of copies at its annual general meeting.

*Clause 26* inserts into the principal Act a new *section 38B*, requiring the Board to commission a performance and efficiency audit at least once every 5 years. The section is similar to section 67B of the Dairy Board Act 1961. The first audit is to be carried out as at 1 October 1994.

*Clause 27* inserts into the principal Act a new *section 38c* requiring the Board to hold an annual general meeting of export growers. Regulations will prescribe in some detail how such meetings are to be held, and what they are to do.

*Clause 28*, which comes into force on 1 January 1994, repeals a number of provisions relating to the local apple and pear market.

*Clause 29*, which comes into force on 1 January 1994, restates the Board's sole right to export apples and pears. The only persons who may lawfully export apples or pears are the Board, its agents, and persons exporting with the Board's consent (and subject to any conditions imposed by the Board).

*Clause 30*, which comes into force on 1 January 1994, abolishes 3 offences relating to the local apple and pear market.

*Clause 31*, which comes into force on 1 January 1994, increases the maximum penalties for the remaining offences under the principal Act. The maximum penalty for a corporation increases from \$2,000 to \$20,000; and the maximum penalty for an individual increases from \$400 to \$5,000.

*Clause 32*, which comes into force on 1 January 1994, repeals most of the regulation-making powers contained in the principal Act. Nearly all these relate to aspects of the present local market arrangements.

*Clause 33* revokes the Apple and Pear Marketing Regulations 1975 with effect from 1 January 1994.

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*Hon. J. H. Falloon*

## PRODUCER BOARD ACTS AMENDMENT

### ANALYSIS

	16. New Part 1A of principal Act
	PART 1A
	STANDARDS
Title	17A. Board to establish standards for export apples and pears
1. Short Title	17B. Board to notify growers of standards
PART I	17. New Part II of principal Act
AMENDMENTS TO PRIMARY PRODUCTS MARKETING ACT 1953	PART II
2. Part to be read with Primary Products Marketing Act 1953	GROWERS MAY REQUIRE BOARD TO ACQUIRE APPLES AND PEARS
3. Regulations	18A. Growers may submit apples and pears to Board
4. New sections substituted	18B. All export-quality fruit to be accepted
5. Marketing Authorities to be bodies corporate	18. Board to pay prices established
5A. Powers of Marketing Authorities	19. Levy on apples and pears
5. Consequential amendments	20. Compulsory hail insurance scheme
6. Contracts of Marketing Authorities	21. Capital charge
7. Borrowing by Marketing Authorities	22. Disposition of seasonal profit
8. Investments	23. Board to prepare financial statements
PART II	24. Audit of accounts and financial statements
AMENDMENTS TO APPLE AND PEAR MARKETING ACT 1971	25. Annual report and statements
9. Part to be read with Apple and Pear Marketing Act 1971	26. Performance and efficiency audits
10. New Zealand Apple and Pear Marketing Board	27. Annual general meetings
11. Board to have powers of natural person	28. Repeal of provisions affecting local market
12. Application of Part II of Commerce Act 1986 to Board	29. Restrictions on export of apples and pears
13. Meetings of Board	30. Miscellaneous offences
14. Principal functions of Board	31. Penalties
15. Delegation of powers of Board	32. Regulations
	33. Revocations

### A BILL INTITULED

### **An Act to amend certain enactments relating to producer boards**

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

**1. Short Title**—This Act may be cited as the Producer Board Acts Amendment Act 1993.

## PART I

### AMENDMENTS TO PRIMARY PRODUCTS MARKETING ACT 1953

**2. Part to be read with Primary Products Marketing Act 1953**—This Part of this Act shall be read together with and deemed part of the Primary Products Marketing Act 1953\* (hereafter in this Part of this Act referred to as the principal Act). 5

**3. Regulations**—Section 3 (4) of the principal Act is hereby repealed. 10

**4. New sections substituted**—The principal Act is hereby amended by repealing section 5, and substituting the following sections:

**“5. Marketing Authorities to be bodies corporate**— 15  
Every Marketing Authority is a body corporate, with perpetual succession and a common seal.

**“5A. Powers of Marketing Authorities**—(1) Except as provided in this Act, every Marketing Authority has—

“(a) The rights, powers, and privileges of a natural person; 20  
and

“(b) The power to issue debentures; and

“(c) The power to grant floating charges on its undertaking or property, or any of it; and

“(d) The power to do any other thing it is authorised to do 25  
by—

“**(i)** This Act; or

“**(ii)** The regulations that established it; or

“**(iii)** Any other enactment; or

“**(iv)** Any rule of law. 30

“(2) A Marketing Authority does not have a power (whether or not it is a power of a natural person) if the regulations that established it provide that it does not have that power.

“(3) A Marketing Authority does not have a power (whether or not it is a power of a natural person) if the regulations that established it provide that its powers are limited to certain 35  
specified powers, or powers of a specified kind or description, that do not include that power.

\*R.S. Vol. 4, p. 201

Amendments: 1981, No. 88; 1983, No. 85; 1985, No. 95; 1987, No. 48

“(4) A Marketing Authority shall not exercise any of its rights, powers, or privileges except for the purpose of—

“(a) Performing its functions; or

5 “(b) Entering into any financial transaction or financial obligation intended to—

“(i) Avoid or lessen any present or possible future risk to the Authority’s current or future income or assets; or

10 “(ii) Lessen any liability of the Authority; or

“(iii) Avoid or lessen any possible future liability of the Authority; or

“(iv) Maximise the Authority’s current or future income (whether net or gross).

15 “(5) Paragraphs (b) to (d) of subsection (1) of this section do not affect the generality of paragraph (a) of that subsection.”

**5. Consequential amendments**—(1) Section 3 (2) of the principal Act is hereby consequentially amended by repealing paragraph (a), and substituting the following paragraphs:

20 “(a) Establishing Marketing Authorities and defining their functions:

“(aa) Limiting the powers of Marketing Authorities:

“(ab) Giving Marketing Authorities additional powers:”.

(2) The following regulations are hereby consequentially revoked:

25 (a) Regulation 12c of the Kiwifruit Marketing Regulations 1977:

(b) Regulation 12 (3) of the Game Industry Board Regulations 1985:

30 (c) Regulation 4 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5.

**6. Contracts of Marketing Authorities**—The principal Act is hereby amended by repealing section 6, and substituting the following section:

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

35 “(a) Any contract that, if made between private persons, must be by deed shall, if made by a Marketing Authority, be in writing under the Authority’s common seal; and

40 “(b) Any contract that, if made between private persons, must be signed by the parties to be charged therewith shall, if made by a Marketing Authority, be either—

“(i) Under the Authority’s common seal; or

- “(ii) Signed by a person acting on behalf of and with the express or implied authority of the Authority; and
- “(c) Any contract that, if made between private persons, may be made orally, may be similarly made by or on behalf of a Marketing Authority by any person acting on behalf of and with the express or implied authority of the Authority. 5
- “(2) Notwithstanding **subsection (1)** of this section,—
- “(a) No contract made by or on behalf of a Marketing Authority shall be invalid by reason only that it was not made in a manner provided by that subsection, if it was made pursuant to a resolution of the Authority or to give effect to a resolution of the Authority; and 10 15
- “(b) A Marketing Authority may, by writing under its common seal, empower any person, either generally or in respect of any specified matter, to execute on its behalf in any place in or beyond New Zealand, instruments under or for the purposes of this Act; and an instrument executed by such an attorney on behalf of the Authority,— 20
- “(i) Shall bind the Authority; and
- “(ii) If executed as a deed, shall have effect as if it were under the Authority’s common seal.” 25

**7. Borrowing by Marketing Authorities**—The following enactments are hereby repealed:

- (a) Section 10 of the principal Act;
- (b) So much of the First Schedule to the Public Finance Act 1989 as relates to the principal Act. 30

**8. Investments**—Section 13 of the principal Act is hereby repealed.

## PART II

### AMENDMENTS TO APPLE AND PEAR MARKETING ACT 1971

- 9. Part to be read with Apple and Pear Marketing Act 1971**—(1) This Part of this Act shall be read together with and deemed part of the Apple and Pear Marketing Act 1971\* (hereafter in this Part of this Act referred to as the principal Act). 35
- (2) Sections 10, 13, 14, 16 to 22, and 28 to 33 of this Act shall come into force on the 1st day of January 1994. 40

\*R.S. Vol. 23, p. 1

(3) The rest of this **Part of this** Act shall come into force on the day on which this Act receives the Royal assent.

**10. New Zealand Apple and Pear Marketing Board—**

5 (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

10 “(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.

15 “(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 8 of the principal Act is hereby consequentially amended by repealing subsection (3), and substituting the following subsection:

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

(3) The principal Act is hereby consequentially amended—

25 (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

30 (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

35 (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”; and

40 (d) By omitting from section 6 (2) the words “member appointed under subsection (3) of section 3”, and substituting the words “director appointed under **section 3 (2) (a)**”.

(4) Section 4 (5) of the principal Act is hereby repealed.

(5) 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.

(6) 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 this Act.

(7) Of the people first nominated by the Board for appointment as directors of the Board under **section 3 (2) (b)** of this 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.

**11. 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) Entering into any financial transaction or financial obligation intended to—

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“(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

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“(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.

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

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(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

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(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.

**12. 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:

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“3B. (1) It is hereby declared that—

“(a) Nothing in Part II of the Commerce Act 1986 applies, or at any time applied, in respect of any act, matter, or thing done (otherwise than in respect of a period before the 1st day of October 1992),—

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“(i) During the period commencing on the 1st day of October 1992 and ending immediately before the commencement of section 12 of the **Producer Board Acts Amendment Act 1993**; or

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“(ii) At any later time in respect of that period or any part of it,—  
by any person (whether the Board, any person acting on the Board’s behalf, or any other person) under section 11 (1) (b), section 19 (1), section 19 (2) (a), section 19 (2) (b) (i) (in relation only to

consulting Fruitgrowers Federation),  
 section 19 (2) (b) (ii), section 27AA, section 27AB,  
 section 28A, section 31, section 33, or section 44 of  
 this Act; and

“(b) Nothing in Part II of the Commerce Act 1986 applies in 5  
 respect of any act, matter, or thing done (otherwise  
 than in respect of a period before the 1st day of  
 October 1992),—

“(i) At any time after the commencement of 10  
**section 12 of the Producer Board Acts Amendment Act 1993**  
 by any person (whether the Board, any person  
 acting on the Board’s behalf, or any other person)  
 under section 11 (1) (b), section 27AA, section 27AB,  
 section 28A, section 31, section 33, or section 44 of  
 this Act; or 15

“(ii) At any time after the 31st day of December  
 1993 by any person (whether the Board, any person  
 acting on the Board’s behalf or any other person)  
 under **section 17A** of this Act.

“(2) In determining, for the purposes of section 43 (1) of the 20  
 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; 25  
 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 30  
 Council made under any Act, no regard shall be had to that  
 paragraph.”

**13. Meetings of Board**—Section 8 of the principal Act is  
 hereby amended by repealing subsection (8), and substituting 35  
 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 conference of at least 4 40  
 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

5 “(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.”

**14. Principal functions of Board**—(1) Section 9 of the principal Act is hereby amended by repealing subsection (1) (as  
10 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—

15 “(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 for export; and

20 “(b) To determine 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

25 (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 section 3A (3) (b) of this Act)”; and

30 (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

35 (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  
40 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.

**15. 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.”

**16. New Part Ia of principal Act**—(1) The principal Act is hereby amended by inserting, before Part II, the following Part:

“PART IA

“STANDARDS

5 “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.

10 “(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.

15 “(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

20 “(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.

25 “(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:

30 “(c) Include in any standard matters relating to—

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

35 “(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; or

“(iii) Both.

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

“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 (2)** 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: 5

“(b) As soon as is practicable after establishing, revoking, or amending a standard, inform the grower of the establishment, revocation, or amendment concerned. 10

“(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 15

“(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 section.”

**17. New Part II of principal Act**—(1) 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: 20

“PART II

“GROWERS MAY REQUIRE BOARD TO ACQUIRE APPLES AND PEARS 25

“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— 30

“(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. 35

“(2) The apples or pears shall be accompanied by a submit-note, in triplicate in a form approved by the Board, stating accurately—

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

“(b) All other particulars required by the form. 40

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

5 “(a) It (or a person acting on its behalf) is satisfied that they do not comply with a standard for the time being in force under **section 17A** of this Act that is applicable to them; or

“(b) They belong to a variety for which no such standard is in force;—

10 and shall notify their grower that they have been accepted or rejected by sending to their grower a copy of the appropriate submit-note, endorsed to that effect.

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

15 **18. Board to pay prices established**—(1) Section 27AA of the principal Act (as substituted by section 4 (1) of the Apple and Pear Marketing Amendment Act 1988) is hereby amended by omitting the words “it buys from growers”, and substituting the words “that become its property under **section 18B (2)** of this Act”.

(2) The principal Act is hereby consequentially amended—

20 (a) By omitting from subsection (1) of section 27AB (as substituted as aforesaid) the words “it buys from growers”, and substituting the words “that become its property under **section 18B (2)** of this Act”:

25 (b) By inserting in subsection (7) (a) of the said section 27AB, before the word “apple”, the words “export sector of the”:

30 (c) By adding to subsection (7) (b) of the said section 27AB the words “exported from New Zealand”:

(d) By omitting from subsection (7) (c) of the said section 27AB the words “bought by the Board, and products manufactured by the Board from apples or, as the case may be, pears”, and substituting the words “that become the Board’s property under **section 18B (2)** of this Act (or, in the case of prices payable in 1994, were bought by the Board before the 1st day of January 1994):

35 (e) By omitting from subsection (7) (d) of the said section 27AB the word “Market”, and substituting the words “Export market”:

40 (f) By omitting from subsection (8) of the said section 27AB the words “it buys”, and substituting the words “that become its property”:

- (g) By omitting from subsection (1) of section 28A (as substituted as aforesaid) the words “it buys”, and substituting the words “that become its property under **section 18B (2)** of this Act”:
- (h) By omitting from subsection (3) of the said section 28A the words “bought by the Board”, and substituting the words “that become the Board’s property under **section 18B (2)** of this Act”.

**19. 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 (2)** 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; and

“(c) Determine the manner in which the levy is to be collected.

“(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 subsections (5) and (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.

5     **20. 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  
10 under section 18B (2) 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  
15 property under section 18B (2) 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  
20 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  
25 1994 the Board may withdraw any deposit made to the Public  
Trustee under that Act before that day.

**21. 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  
30 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  
35 property under section 18B (2) 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 (2) of this Act”;  
and

40 (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 (2) 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 (2)** of this Act or (before the 1st day of January 1994)”.

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

- (a) By omitting from subsection (4) the words “from which it purchased apples or pears”, and substituting the words “of apples and pears that became the Board’s property under **section 18b (2)** of this Act”; and
- (b) By inserting in subsection (2), after the word “growers”, the words “of apples or pears that during the season concerned became the Board’s property under **section 18b (2)** of this Act (or, in the case of the season that commenced on the 1st day of October 1992, were bought by the Board during that season)”.

**23. 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 22** 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

5 “(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

10 “(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.

15 “(5) In every case, the Board’s statements shall, in respect of every subsidiary (within the meaning of section 178 of the Companies Act 1993) of the Board, include statements of the kind that holding companies are required by section 185 of that Act to prepare in respect of subsidiaries.

20 “(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.”

**24. 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:

25 “38. (1) Subject to subsection (2) of this section,—

30 “(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

35 “(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.

40 “(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.”

5

(2) Section 38A of the principal Act (as substituted as aforesaid) is hereby consequentially amended by omitting the words “Audit Office”, in both places where they occur, and substituting in each case the word “auditor”.

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

10

(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.

15

**25. 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:

20

“(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

25

“(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:

30

“(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 178 of the Companies Act 1993) of the Board to their directors.”

35

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

40

“(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.”

5       **26. 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—

10       “(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

15       “(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

20       “(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.

25       “(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.

30       “(6) The Board—

      “(a) Shall not determine terms of reference for an audit without the approval of the Fruitgrowers Federation; and

35       “(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—

40       “(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. 5

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

“(10) Where the Board— 10

“(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,— 15

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— 20

“(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 25

“(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 30

“(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 35

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

“(i) Performing its functions; and

“(ii) Exercising its powers; and

“(iii) Carrying on its activities; and 40

“(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.

5

“(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.

10

“(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.

15

“(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—

20

“(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.

25

“(16) The Official Information Act 1982 does not apply to any report prepared under **subsection (12)** of this section.

“(17) 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.

30

“(18) 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;—

35

and shall relate to the Board’s performance as at that day.”

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

40

“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 (2)** of this Act.

“(2) Regulations made under this Act shall prescribe, in respect of meetings held under this section,—

- “(a) Who may attend:
- “(b) Who may vote on matters under consideration:
- “(c) Matters (in addition to those specified in paragraphs (b) and (c) of subsection (3) of this section) that are to be considered: 5
- “(d) Matters on which resolutions must or may be passed:
- “(e) 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:
- “(f) When (if at all) the people not entitled to attend may be excluded: 10
- “(g) How resolutions are to be submitted, and adopted or rejected:
- “(h) Subject to subsection (4) of this section, how proceedings are to be regulated. 15
- “(3) 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 20
- “(c) Where and when the next national conference should be held. 25
- “(4) 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.
- “(5) Subject to subsection (4) of this section and regulations made under subsection (2) of this section, the procedure at an annual general meeting shall be regulated as the person presiding thinks fit.” 30

**28. 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: 35
- (c) The Apple and Pear Marketing Amendment Act 1980.

**29. 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: 40

“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 consent of the Board, and in accordance with any conditions subject to which the Board gave that consent.

5 “(2) 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.

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

**31. 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—

15 “(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.”

20 **32. Regulations**—Section 47 of the principal Act is hereby amended by repealing paragraphs (a) to (i).

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

(a) The Apple and Pear Marketing Regulations 1975:

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

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

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