

Wool Industry Restructuring Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

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

Introduction

The Wool Industry Restructuring Bill will reform the structure of the wool industry by converting the New Zealand Wool Board into a transitional company, the Wool Board Disestablishment Company Limited, and allocating the current functions of the Wool Board to a number of different entities. The proposals contained in this bill were first raised in a report on industry restructuring prepared by consultants McKinsey and Company that was presented to growers in June 2000.

The Disestablishment Company will be responsible only for meeting residual liabilities, administering an interim levy and disbursing the Board's net assets to wool growers. Wool Board assets will be distributed on the basis of sheep numbers to growers in the form of exchangeable shares and redeemable preference shares in the Disestablishment Company, which will then be converted into cash or shares in the two grower-owned companies.

These grower-owned companies, Wool Equities Limited and Merino Grower Investments Limited, will hold various commercial assets and intellectual property on behalf of growers of the different

sheep types. Shares in Merino Grower Investments will be available only to growers of merino wool, while shares in Wool Equities will be available to non-merino wool growers. To reduce the possibility of corporate takeover of these grower companies, both the bill and the company constitutions will prevent growers from holding more than five percent of these companies, and trading of shares will be restricted to growers for at least two years and then changed only by amending the company constitution.

Following a recommendation in the McKinsey report, the growers elected an organisation, Sheep Incorporated (SheepCo), to undertake industry good functions. SheepCo has been preparing a proposal under the Commodity Levies Act 1990. If growers vote to support the proposal, a commodity levy will be used to fund such industry good activities.

As a response to another recommendation in the McKinsey report, a genetic development and biotechnology company named Ovita was established as a three-way joint venture between the Wool Board, the New Zealand Meat Board and AgResearch Limited. Ovita is intended to have a self-sustaining commercial framework, and will not be dependent on industry good levy funding. Covita is a related company that is intended to be the vehicle for commercialising the off-farm applications of the technology developed from the Ovita programmes.

Grower consultation and contribution

We were informed by the Wool Board that the growers had substantial contribution in the development of the proposal contained in this bill. Growers made submissions to the McKinsey report, and then voted in a referendum to endorse the McKinsey proposals, with 89 percent support in a poll with a grower response rate of 40 percent. A final referendum was held in May 2002, with a 36 percent grower response rate, to vote on detailed proposals regarding the abolition of the Wool Board, the introduction of new structures and the apportionment of Wool Board assets to growers. In that referendum, 97 percent voted in favour of winding up the Wool Board, 93 percent agreed with apportioning board assets based on the number of sheep farmed, and 58 percent voted in favour of restricting share ownership in Wool Equities and Merino Grower Investments

to growers for the first two years with a five percent cap on ownership in each company. The new industry structure to be implemented by this bill was therefore presented to us as being one that has significant support among growers and industry participants.

However, we heard from a number of submitters who question whether the referendum results actually gave a mandate to make these changes to the wool industry. They note the strong disillusionment in the industry with the Wool Board, and are concerned that the same group that has produced this reaction is implementing these proposals. In the final referendum on the detailed proposal growers were offered only two alternatives, to retain the Wool Board in its current structure, or to abolish the Wool Board and replace it with the new structures. Some submitters suggest that the unpopularity of the Wool Board with growers caused them to vote to abolish the Wool Board without considering the consequences of adopting the new structures and companies.

We have considered the submitters' comments, and note their concern that some growers voting in the final referendum may have been voting to abolish the Wool Board, and not necessarily in favour of the structures being proposed. The Green member expressed concern that the consultation and voting processes did not constitute a mandate for the restructuring. Some submitters said that the growers may not have recognised the full impact of the changes being proposed, and might not have voted so overwhelmingly in favour of the plan had they done so.

We have taken into consideration other issues raised by submitters and recommend a number of changes to strengthen the proposal and to protect the assets and interests of growers.

Eligibility criteria

Clause 20 contains the provisions for the allocation and issue of shares in the companies' Wool Equities Limited and Merino Grower Investments Limited. The bill restricts share allocation and issue to growers who were farming 250 or more sheep on 30 June 2002 and who derived income from wool from those sheep. The Green member's view was that the threshold should be 100 sheep held at 30 June over any of the preceding five years.

A number of submitters expressed disappointment at the criteria used to determine whether sheep farmers would be eligible for the

allocation and issue of shares. They note that some active participants in the wool industry will be excluded from receiving shares in the companies because, for various reasons, they held less than 250 sheep on 30 June 2002. We understand the disappointment of growers who made submissions on this point. In many cases they have participated in the industry for many years but find themselves excluded from receiving many of the benefits of the restructuring due to particular circumstances. However, we do not consider it appropriate to amend the eligibility criteria. There has already been an extensive application process where growers have made a decision whether to apply based on the criteria as contained within the bill. Any change to the criteria would necessitate a further application process, with considerable expense. We also note that, whatever eligibility criteria is set by the bill, there will inevitably be industry participants who will have legitimate reasons for feeling that they have been arbitrarily excluded from sharing in the benefits offered by the restructuring.

Share allocation

We consider the current drafting of clause 20 to be complicated, due to its considerable length. We therefore recommend omitting clause 20, and replacing it with new clauses 20 to 20G. These clauses will contain provisions that are largely the same in wording or effect as the clauses in the current bill, except in cases where we recommend further amendment to the clause as introduced. However, we consider dividing one long clause into many shorter clauses should aid understanding and application of these provisions.

Currently, the calculation of the grower's share allocation is based only on average sheep numbers over three years. We heard concerns that this could result in disadvantaging long-term growers who are increasing their sheep numbers, in comparison to both new entrant growers and long-term growers with decreasing sheep numbers. We consider this concern should be addressed by allowing growers to receive a share allocation calculated on the basis of the greater of average sheep numbers over three years or total sheep numbers on 30 June 2002. We therefore recommend amending new clauses 20B(3) and 20C(3) to provide that the calculation of the grower's share entitlement should be based on either sheep numbers as at 30 June 2002 or average sheep numbers farmed as at 30 June 2000, 2001 and 2002, whichever is the greater.

We did consider whether a more appropriate means of calculating share allocation could be adopted. We were particularly interested in whether grower levies could be used as a more accurate basis for assessing share allocation. However, the Wool Board has been unable in the past to record accurate details of grower levy payments, and this has prevented us from recommending the use of more appropriate and accurate criteria for share allocation in this bill.

Clauses 20(6) and (7) currently require the Wool Board to take all practicable steps to identify and request information from growers to prepare the share allocation plan, and allows for the exclusion of any grower that unreasonably fails to provide the requested information. The Wool Board has already implemented and concluded a grower registration scheme for this purpose. We therefore recommend new clause 20F require the Wool Board take all practicable steps to identify and register growers for the purpose of the share allocation plans. We also recommend that new clause 22A provide that the fact that the Board undertook a grower registration scheme prior to the enactment of the bill does not invalidate the exercise of that function. We encourage the Minister to ensure that the share allocation plan, including steps taken in the grower registration scheme to identify and request information from growers, has been carried out to his satisfaction.

We consider that the Wool Board needs the power, prior to the enactment of the bill, to do all things necessary to prepare for the restructuring. Therefore, we recommend new clause 22A confer on the Wool Board the necessary powers and functions under Parts 2 and 3, including prior to the bill's commencement date. We also recommend clause 11 be omitted as the provisions in that clause are covered by new clause 22A.

Share allocation process

We do not believe the current wording of clause 20(1)(a) accurately describes the intended procedure for allocation and issue of shares in the Disestablishment Company, which was very carefully developed for tax purposes.

For non-merino wool growers, the Disestablishment Company will issue exchangeable shares and redeemable preference shares with no voting rights attached, and ordinary shares with voting rights. These shares are distributed to eligible non-merino wool growers. Wool Equities will have an option to purchase the ordinary shares. The

exchangeable shares will be exchanged for ordinary shares in Wool Equities. Growers will have a choice whether to redeem their redeemable preference shares for cash or to subscribe for additional ordinary shares.

For merino wool growers, the process will be different. The Wool Board has previously given a loan to Merino Growers Investments, which will be converted into a mandatory convertible note. On the restructuring day, the Disestablishment Company will issue exchangeable shares and redeemable preference shares, both non-voting shares, to merino wool growers. The exchangeable shares will be exchanged for the mandatory convertible note, which will then convert into ordinary shares in Merino Grower Investments. The redeemable preference shares will be redeemed for cash. Unlike non-merino wool growers, we recommend merino wool growers should not be able to subscribe for additional ordinary shares. We explain our reasoning for this at a later point in this commentary.

We note that the share allocation plans for both Wool Equities and Merino Grower Investments are likely to specify that the shares will be allocated initially to bare trusts. These bare trusts will be an administrative vehicle used to allocate the shares to growers. We do not consider it necessary to refer to these bare trusts in the bill, and note that they should be covered by clause 28(6).

We recommend amending new clauses 20D and 20E to ensure the provision accurately reflects the process as it will eventually be implemented.

Takeovers and security of grower assets

Some submitters are concerned that the new industry structures established by the bill may be subject to risk of asset stripping, where a corporate raider works to take majority ownership of a grower-owned company and then gain access to the considerable assets of that company. We shared these concerns, as we had noted a similar takeover in the pipfruit industry despite the presence of provisions in that legislation intended to prevent such events. We are also aware that the assets to be allocated in the restructuring would be of interest to a corporate raider, including accumulated tax losses, intellectual property, funds to be invested in Ovita and Covita, and assets allocated to Merino Grower Investments and Wool Equities.

We have been informed that the constitutions for Wool Equities and Merino Grower Investments will contain a number of shareholding

restrictions. They will prevent the issue or transfer of shares to a person who is not a grower at the time of issue and will restrict the ability of a person who is not a grower from acquiring shares in the companies after the initial share allocation. The constitutions will also prevent shareholders from holding, or having a 'relevant interest' (as defined in the Securities Markets Act 1988) in, greater than five percent of the shares in that company. This would include shares held by associated persons of the shareholder, and would include persons acting jointly or in concert with each other, or people who may be influenced when making decisions or exercising power by an arrangement or relationship with the shareholder. These restrictions will remain in place for at least two years, and will require a vote by growers as shareholders before the constitution can be amended to remove these restrictions.

The draft constitutions were presented to us only at a late stage and raised a number of serious issues. Whilst we acknowledge that final drafting is being developed, we note the importance of these instruments to the operation of the legislation and would strongly advise the Minister to ensure the constitutions are in the best interest of wool growers.

We consider it important that the legislation require provisions be included in the constitutions to strengthen the legislative protections against corporate takeover of the wool industry structures. We therefore recommend the introduction of a new clause 19A, specifying provisions that must be contained in the constitutions for Wool Equities and Merino Grower Investments. The new clause should require the company constitutions to provide that, for two years from the date of share allocation, shares cannot be sold to a non-grower, and non-growers cannot buy shares or become a shareholder in the company. It should also prevent shareholders and associated persons from acquiring, holding or controlling voting rights, directly or indirectly, in concert or otherwise, of more than five percent of the company, and specify the consequences and action to be taken if this provision is breached.

We note that the acquisition of a majority shareholding in either of the grower-owned companies should not allow the shareholder to access many of the valuable assets held by those companies. Provisions in the Income Tax Act 1994 would prevent the accumulated tax losses from being carried forward if a corporate raider acquired over 51 percent shareholding in Wool Equities. Should this occur, the tax losses could not be offset against the income of either the

Disestablishment Company or Wool Equities. If any shareholder sought to use the tax losses to offset income in another company, that company would require a 66 percent commonality of ownership with the Wool Board at the time the losses were accrued. We consider the provisions in the Income Tax Act are sufficient to prevent corporate raiders from seeking to take over the grower-owned companies to access the accumulated tax losses.

We were also concerned that a corporate raider might seek to take control of Wool Equities in order to access the funds committed by the Wool Board for investment in Ovita and Covita. We are informed that Wool Equities will be unable to access these funds or require the Disestablishment Company to pay any of these funds to it. Wool Equities will only be able to authorise the Disestablishment Company to distribute the funds to Ovita under the payment schedule. If Wool Equities does not give this authorisation, the funds will be released to growers through the redemption of redeemable preference shares issued under the share allocation plan. The Disestablishment Company will also be able to access the funds to meet outstanding Wool Board liabilities where necessary. We are satisfied that if a corporate raider takes over Wool Equities, it will not be able to access the funds intended to be invested in Ovita.

We are informed that pre-emptive rights provisions also exist to protect the intellectual property rights of Ovita, Covita, and the New Zealand Merino Company Limited that Merino Grower Investments has a majority shareholding interest in. The participation agreement for Ovita or Covita with Wool Equities requires Wool Equities to sell its interests in Ovita and Covita if a corporate raider acquires over 50 percent of Wool Equities, or if there is a change in the effective management or control of Wool Equities due to the acquisition of shares by a corporate raider. The agreement contains provisions allowing other shareholders in Ovita or Covita to consent to the acquisition or change in control. Similar provisions are contained in the constitution of The New Zealand Merino Company.

From our consideration we believe these arrangements, along with our recommended amendments to the bill, are sufficient to provide protection for grower assets against corporate takeover and remove many of the incentives a corporate raider may have for conducting a corporate takeover. However, we are aware that the Minister has final approval of the restructuring plan. We encourage the Minister, before approving the restructuring plan, to ensure that sufficient

restrictions are in place to prevent corporate takeover and protect grower assets.

Restructuring plan

Clause 18 requires the Board to prepare a restructuring plan that meets the criteria outlined in clause 19. The Board is required to consult with Wool Equities and Merino Grower Investments on the plan before it is submitted to the Minister for approval. We recommend clause 18(2) be amended to require the Board to also consult with SheepCo on the restructuring plan. We believe this is appropriate, as the restructuring plan will contain a number of provisions governing the transfer of assets to SheepCo. We also consider consultation recognises the importance of the industry good role SheepCo is likely to play.

Currently, the bill requires the Wool Board to prepare a restructuring plan to be submitted to the Minister by 16 May 2003. As this date has passed, we recommend amending clause 18(1) to require the restructuring plan be submitted to the Minister within 20 working days after the bill comes into force.

Disestablishment Company directors

Clause 14 requires the Wool Board to appoint four, five, six or seven board directors as directors of the Disestablishment Company. These must include at least two directors elected to the Board by growers and two directors appointed by the Minister.

We believe the number of directors in the Disestablishment Company should be reduced. We do not consider it necessary for the company to have a large number of directors, as its role is only to administer the interim levy, to deal with the liabilities of the Wool Board and to implement the restructuring plan. A smaller board should be able to fulfil the company's limited functions while minimising overhead costs. We therefore recommend amending clause 14(1) to provide for the appointment of three, four or five directors, and amending clause 14(3) to specify that the total number of board members must not exceed five. As a consequential amendment, we recommend amending clause 14(2) to require the appointment of at least two directors elected by growers, but reducing the number of Minister-appointed directors to at least one.

We do not agree with submitters who suggest that the directors of the Disestablishment Company should not be selected from the

current directors of the Wool Board. We consider it important to maintain continuity of directorship between the Wool Board and the Disestablishment Company.

Liability exemption for directors

Clause 16 exempts directors and employees from personal liability for any liabilities of the Wool Board prior to restructuring or acts or omissions made in good faith to perform a function, duty or power of the board. We heard from a number of submitters concerned by the inclusion of this provision in the bill, as they believe it will interfere with the rights of claimants to seek legal recourse for perceived wrongs conducted by the Wool Board.

We do not believe it necessary to amend the bill to address the issue of legal recourse. The bill does not provide the Wool Board itself with an exemption from liability for its actions. Where a claimant has a legitimate claim against the Board, this may still be pursued against the Disestablishment Company, which assumes all of the Board's assets and liabilities, including any current or potential legal action against the Board.

The purpose of this clause is to protect former Wool Board directors and employees from any frivolous or vexatious legal actions that may be taken against them. We consider it important to note the provisions do not protect a director or employee in any instance where that person has acted in bad faith.

We also note that the Wool Board purchased insurance to cover its directors in case of legal action being taken against them personally. This offered directors some degree of security and protection. However, this insurance will end with the dissolution of the Wool Board, potentially opening the directors up to liability that they would previously have been protected from. We consider the provisions in clause 16 are desirable, as they do not unnecessarily impede the ability of claimants to pursue legal remedies to legitimate claims, but do protect board directors from frivolous or vexatious legal actions.

SheepCo

We received a submission from SheepCo requesting an amendment to allow the Disestablishment Company to provide working capital to the company. If the commodity levies proposal put forward by SheepCo gains grower support, the company will require an amount

of working capital to allow it to function from the day the levy is payable until sufficient levy money is available. We understand levy income for SheepCo is likely to be particularly low in the period until December 2004.

However, we do not believe amendment to the bill is either necessary or desirable. We understand discussions are underway between SheepCo and the Wool Board on the possibility for the Disestablishment Company to provide a loan to cover SheepCo over its initial starting period, and we believe such an arrangement is the most appropriate manner to ensure sufficient working capital is available to fund SheepCo's initial activities.

We recognise the possibility that the growers may not support the commodity levies proposal put forward by SheepCo. Should this occur, another body may be established to perform industry good activities. To provide for this possibility and to allow such a successor body to rely on the provisions in this bill, we recommend amending clause 3 to define the term 'SheepCo' as including a successor body established for meat and wool industry good activities.

Merino Grower Investments

The bill currently allows merino wool growers to elect whether to convert their redeemable preference shares into cash or ordinary shares in Merino Grower Investments. However, we are informed that Merino Grower Investments considers it will be established with sufficient capital, and therefore does not wish for growers to be able to convert their shares into ordinary shares in the company. We therefore recommend amending new clause 20E to require growers of merino wool to convert their redeemable preference shares into cash only. We note that this amendment does not affect the provisions allowing growers of non-merino wool to convert their redeemable preference shares into ordinary shares in Wool Equities.

Clause 19(3) provides for the share of the Board's assets to be distributed to the merino sector to be 7.2 percent as at the restructuring day, with adjustments to take into account a number of items. We recommend amending the clause to provide that these adjustments should include a share of the generic restructuring costs and any costs specific to the merino sector incurred after 30 June 2001. The provision should also specify that the disproportionate expenditure by the Wool Board on the behalf of wool growers between 1 July 1995 and 30 June 2001 is set at the amount of \$782,000.

We recommend amending clause 19(1)(c) and 19(3) to require that assets be transferred to 'merino wool growers', rather than 'Merino Grower Investments'. This is a technical change to clarify the intention of the provision and to avoid creating a tax liability. The clause should provide for shares to be issued to merino wool growers and for the loan from the Board to be exchanged in redemption of those shares.

Clause 28(2) is intended to cover any grower who grows wool that is not merino. However, we consider the current wording of the clause, 'a grower who is not a grower of merino wool', may be misinterpreted as excluding growers that grow both merino and non-merino wool. We therefore recommend replacing the words 'a grower who is not a grower of merino wool' with the words 'a grower of sheep other than merino'.

To increase certainty, we recommend including in clause 31 a definition of the term 'Merino Distribution Trust' which is used in clause 28(4).

Other amendments

We believe a number of minor technical amendments should be made to the provisions governing the imposition of a wool levy to be administered by the Disestablishment Company. We recommend amending clause 32(4) to provide that the levy is imposed on wool on the bases and rates prescribed by the Board by notice in the *Gazette* on 17 April 2003. We also recommend including references to both 'value' and 'weight' in clause 35(4), to reflect the fact that different wools are subject to levies based on either value or weight.

We recommend omitting the formula currently contained in clause 29(2) for calculating the amount of tax losses to be transferred to Merino Grower Investments. To replace the formula, we recommend a provision stating that 7.2 percent of the Wool Board's tax losses will be transferred to Merino Grower Investments. We consider this simplifies the provision and reflects an agreement that has been reached between the Wool Board and the merino sector.

To increase the Disestablishment Company's accountability to growers for its actions, we recommend amending clause 48(1) to provide that the annual report on the implementation of the restructuring plan must be sent, on request, to any person who was a grower immediately before the restructuring day.

Restructuring of Wool Research Organisation

During our consideration of the bill, we were informed of plans for the restructuring of the Wool Research Organisation of New Zealand (WRONZ), including changes in the shareholding of Keratec New Zealand Limited, a joint venture researching potential applications for wool proteins. While this restructuring is outside of this bill, we were interested in the structures that will be implemented under the process.

The restructuring of WRONZ will involve two stages. In the first stage a new science and technology company, Canesis Network Limited, will be established to take over most of WRONZ's current operations, intellectual property, equipment and resources. A 66 percent share in Canesis Network will be held by WRONZ, with the remaining 34 percent share held by Wool Equities. Wool Equities will hold a 67 percent share in Keratec and Canesis Network will hold the remaining 33 percent share. Wool growers will therefore hold approximately 78 percent of Keratec through Wool Equities. Canesis Network will be governed by three directors appointed by WRONZ and two directors appointed by Wool Equities.

The implementation of the second stage is dependent on industry members choosing to invest in Canesis Network. The second stage involves a new company, Canesis Venture Capital Limited, which will be established on behalf of WRONZ industrial members and any other associated parties that choose to invest in Canesis Network. Following the second stage, Canesis Venture Capital will be able to acquire a share in Canesis Network up to a maximum of 25.1 percent. Should this be achieved, WRONZ's share in Canesis Network will reduce to 49.8 percent, and Wool Equities will hold 25.1 percent. The shareholding in Keratec between Wool Equities and Canesis Network will be unchanged, but the total grower shareholding in Keratec will reduce marginally to 75 percent. Canesis Network will be governed by three directors appointed by WRONZ, two directors appointed by Wool Equities, and two directors appointed by Canesis Venture Capital.

The Green member expressed profound concern that in his view the Canesis developments were not mandated by farmer education or vote and he recommends that the Minister pay particular attention to the ownership consequences of the proposed structures.

Appendix

Committee process

The Wool Industry Restructuring Bill was referred to the committee on 19 March 2003. The closing date for submissions was 14 April 2003. We received and considered 33 submissions from interested groups and individuals. We heard 20 submissions, which included holding hearings in Christchurch. Hearing of evidence took 11 hours 21 minutes and consideration took 11 hours 45 minutes.

We received advice from the Ministry of Agriculture and Forestry and Inland Revenue Department.

Committee membership

Hon David Carter (Chairperson)

Janet Mackey (Deputy Chairperson)

Clayton Cosgrove

Gerrard Eckhoff

Ian Ewen-Street

Phil Heatley

Hon Damien O'Connor

Hon Dover Samuels

R Doug Woolerton

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Jim Sutton

Wool Industry Restructuring Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Wool Industry Restructuring Act 2002.

Part 1

Commencement and interpretation

2 Commencement 5

- (1) **Sections 32 to 46** come into force on the restructuring day.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

3 Interpretation

In this Act, unless the context otherwise requires,— 10

assets of the Board—

- (a) means property of the Board of all kinds, both real and personal, of whatever nature and wherever situated; and
- (b) without limiting **paragraph (a)**, includes—
 - (i) property over which the Board has a power of disposition or appointment; and 15
 - (ii) copyright, patents, registered designs, trade marks, know-how, service marks, trade secrets, or other intellectual or industrial property owned by the Board; and 20
 - (iii) applications pending for patents, trade marks, copyright, and other intellectual or industrial property of the Board; and
 - (iv) choses in action and money owned by, or vested in, the Board; and 25
 - (v) the Board's goodwill; and
 - (vi) rights, interests, and claims in or to property of every kind that are exercisable by, or vested in, or capable of being made by, the Board,—

- (A) whether or not arising from, accruing under, created or evidenced by, or the subject of an instrument or other document; and
- (B) whether liquidated or unliquidated; and 5
- (C) whether actual, contingent, prospective, or vested

Board means the New Zealand Wool Board established under the Wool Board Act 1997

collection agent— 10

- (a) means a person designated under **section 33** to collect levy for the company; and
- (b) includes a person designated to collect levy for the Board under section 37(1) of the Wool Board Act 1997 on the date this Act comes into force 15

company means the Wool Board Disestablishment Company Limited into which the Board converts under **section 5**

financial year of the company means the period from 1 July in one year to 30 June in the following year

grower means a person engaged, in New Zealand, in the business of farming sheep, whether in conjunction with another business or not 20

levy means the levy imposed under **section 35** of this Act

levy money means the money paid or payable in respect of levy 25

levy return means the return required to be made under **section 36** of this Act

liabilities of the Board means liabilities, debts, charges, duties, and obligations of the Board of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere 30

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 35

New (unanimous)

non-merino grower means a grower of sheep other than merino sheep

restructuring day means the date specified in the restructuring plan as the date on which the Board converts into the company

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restructuring plan means—

- (a) the plan prepared by the Board and approved by the Minister under **Part 3**; or
- (b) the plan arranged by the Minister under **Part 3**

rights of the Board means all rights, powers, privileges, and immunities of the Board, whether actual, contingent, or prospective

10

New (unanimous)

share allocation plans means the plans for the allocation and issue of shares, and other securities, in the company, Wool Equities Limited, and Merino Grower Investments Limited

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sheep includes lambs that are 6 months old or older

SheepCo means Sheep Incorporated or a successor body established for meat and wool industry good purposes

specified activities means the activities specified in **section 34 wool**—

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- (a) means the wool of sheep, whether greasy, scoured, washed, carbonised, fellmongered, or sliped; and
- (b) includes dag wool, wool on the skin (whether tanned or not), processed wool, and manufactured wool (including wool noils and wool waste).

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4 Act binds the Crown

This Act binds the Crown.

Part 2 Conversion of Board

Conversion process and effect

- 5 Board converts to company** 5
- (1) On the restructuring day, the Board converts into, and continues as, a company incorporated under the Companies Act 1993.
- (2) The name of the company into which the Board converts is Wool Board Disestablishment Company Limited.
- 6 Steps by Board** 10
- Before the restructuring day, the Board must deliver the following information and fee to the Registrar of Companies:
- (a) a copy of the constitution of the company certified by a director of the Board:
- (b) the address of the registered office and the address for service of the company: 15
- (c) the name and residential address of each director of the company immediately following the conversion:
- (d) a document signed by each director in which the director consents to being a director and certifies that the director is not disqualified from being appointed or holding office as a director of the company: 20
- (e) the name and residential address of each shareholder of the company and the number of shares held by each shareholder immediately following conversion: 25
- (f) the fee payable for registration of a company.
- 7 Certificate of incorporation by Registrar**
- (1) The Registrar of Companies must issue a certificate of incorporation for the company as soon as practicable after being satisfied that the information required by **section 6(a) to (e)** is in order and the fee required by **section 6(f)** is paid. 30
- (2) The certificate of incorporation referred to in **subsection (1)**—
- (a) may be issued on or after the restructuring day; and
- (b) is, on issue, conclusive evidence that the Board is a company incorporated under the Companies Act 1993 35
- from the restructuring day.

- 8 Notice of conversion**
 As soon as practicable after the restructuring day, the company must give notice that the Board has become a company with limited liability by—
- (a) publishing a notice in the *Gazette* and in each of the daily newspapers published in Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
 - (b) taking all other steps for that purpose that the company considers are reasonably practicable and necessary.
- 9 Annual return**
 Within 20 working days after the restructuring day, the company must deliver to the Registrar of Companies, for registration under the Companies Act 1993, an annual return for the company that, so far as practicable, contains the information specified in the Fourth Schedule of that Act.
- 10 Final report of Board**
- (1) As soon as reasonably practicable but not later than 3 months after the restructuring day, the chairperson must arrange a final report of the Board.
 - (2) The report must contain audited financial statements and an annual report—
 - (a) for the financial year ending 30 June 2003; or
 - (b) if the Board has not converted into the company by 1 July 2003, for the financial year ended 30 June 2003 and for the period from 1 July 2003 to the restructuring day.
 - (3) The report must comply with sections 26 to 29 of the Wool Board Act 1997 as if those sections still applied.
 - (4) The chairperson must, on request, send a copy of the report to a person who was a grower immediately before the restructuring day.
 - (5) The chairperson must give a copy of the report to the Minister.
 - (6) As soon as reasonably practicable after receiving the report, the Minister must present it to the House of Representatives.
 - (7) The reasonable costs incurred by the chairperson in complying with this section must be met by the company.

- (8) In this section, **chairperson** means the person who held office as the chairperson of the Board immediately before the restructuring day.

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11 Powers of Board

The Board has the capacity and powers necessary to do all that is required of it, directly and incidentally, by this Part. 5

12 Effect of conversion

- (1) The company is the same person as the body established by section 4 of the Wool Board Act 1997.
- (2) The conversion of the Board into a company does not— 10
- (a) create a new entity; or
 - (b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal person; or
 - (c) affect the assets, rights, or liabilities of the company; or 15
 - (d) affect proceedings by or against the company.
- (3) 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.
- (4) The conversion of the Board into a company does not affect 20
- rights, interests, liabilities, or obligations existing immediately before the conversion.
- (5) The assets of the Board and the liabilities of the Board existing immediately before its conversion continue as the 25
- assets and liabilities of the company without transfer, disposition, assumption, or distribution.
- (6) All transactions and acts of the Board before its conversion are treated as transactions and acts of the company and as 30
- having been entered into, or performed by, the company at the time they were entered into, or performed by, the Board.

13 Certain matters not affected by conversion

The things authorised and achieved by this Act and the restructuring plan, in particular the movement of assets of the Board and liabilities of the Board to the company, Wool

Equities Limited, or Merino Grower Investments Limited or SheepCo,—

- (a) do not place the Crown, the Board, any member of the Board, Wool Equities Limited, or Merino Grower Investments Limited, or any other person in breach of or default under a contract, or in breach of trust or confidence, or as otherwise making any of them guilty of a civil wrong: 5
- (b) must not be regarded as conferring a right on a person to— 10
 - (i) terminate or cancel or modify a contract, agreement, or arrangement; or
 - (ii) enforce or accelerate the performance of an obligation or liability; or
 - (iii) require the performance of an obligation not otherwise arising for performance: 15
- (c) do not release a guarantor wholly or in part from all or any obligation:
- (d) do not invalidate or discharge a contract or security.

Directors of company 20

14 Appointment of directors

- (1) The Board must appoint ~~(4, 5, 6, or 7)~~ 3, 4, or 5 directors of the Board, immediately before its conversion, as directors of the company.
- (2) The directors of the company appointed under **subsection (1)** must include— 25
 - (a) at least 2 persons who were elected to the Board by growers; and
 - (b) at least ~~(2 persons)~~ 1 person who ~~(were)~~ was appointed to the Board by the Minister on the recommendation of the Board under section 13(2)(b) of the Wool Board Act 1997. 30
- (3) The total number of directors of the company must not exceed ~~(7)~~ 5.

15 Ministerial appointments 35

- (1) At any time before the Minister receives the final report on the implementation of the restructuring plan under **section 49**, the Minister—
 - (a) may appoint a director of the company; and

- (b) must appoint a director of the company if the number of directors is smaller than (4) 3.
- (2) A person may not be appointed by the Minister under **subsection (1)(a)** unless the person is recommended for appointment by the directors of the company. 5
- (3) To facilitate appointment by the Minister under **subsection (1)(b)**, the directors of the company must recommend a person for appointment by the Minister before the number of directors is smaller than (4) 3.
- (4) However, the Minister must appoint a director of the company under **subsection (1)(b)** if the directors do not make the required recommendation under **subsection (3)**. 10
- (5) The Minister may reject particular individuals recommended under **subsections (2) and (3)** and seek other recommendations.
- 16 Liability of directors and employees of Board** 15
 No person who was a director or employee of the Board is personally responsible—
- (a) for a liability of the Board prior to the restructuring day;
 or
- (b) for an act done or omitted to be done by the Board or an employee of the Board, prior to the restructuring day, in good faith in performance or intended performance of a function, duty or power of the Board. 20
- 17 No compensation for loss of office**
 No director of the Board is entitled to compensation for loss of office resulting from the conversion of the Board. 25

Part 3

Restructuring of wool industry

Restructuring plan, constitutions, and share allocation plan

- 18 (Restructuring) Board must prepare restructuring plan** 30
- (1) The Board must prepare a restructuring plan and submit it to the Minister (*by 16 May 2003,*) within 20 working days after this Act comes into force together with a certificate signed by at least 2 directors of the Board certifying that the plan complies with **sections 19 to 21**. 35

- (2) Before (*sending*) submitting the restructuring plan to the Minister, the Board must consult Wool Equities Limited, (*and*) Merino Grower Investments Limited, and SheepCo.

19 Contents

- (1) The restructuring plan must— 5
- (a) specify a restructuring day; and
 - (b) estimate, as at the restructuring day,—
 - (i) the assets of the Board and the liabilities of the Board; and
 - (ii) the value of those assets and liabilities; and 10
 - (c) provide and specify that a portion of the company's assets be allocated to (*Merino Grower Investments Limited*) merino wool growers; and
 - (d) provide and specify that a portion of the company's assets be allocated to Wool Equities Limited; and 15
 - (e) provide and specify that a portion of the company's assets be allocated to SheepCo, if a levy is imposed on wool by an order made under the Commodity Levies Act 1990, before 30 June 2004, and that levy is payable to SheepCo; and 20
 - (f) provide for payments to be made by the company to SheepCo to assist it to seek an order imposing a levy on wool under the Commodity Levies Act 1990; and
 - (g) estimate—
 - (i) the value of assets to be allocated to SheepCo under **paragraph (e)**, as at the restructuring day; and 25
 - (ii) the amount of payments to SheepCo under **paragraph (f)**; and
 - (h) contain plans for the allocation and issue of shares in the company, Wool Equities Limited, and Merino Grower Investments Limited, including the criteria for eligibility for shares in the latter 2 companies; and 30
 - (i) contain constitutions for Wool Equities Limited, Merino Grower Investments Limited, and the company that comply with the requirements of this Act. 35
- (2) The restructuring plan may specify 2 portions for allocation under (*both*) **subsection (1)(c) and (d)**, (*one*) 1 that assumes that the condition attaching to the allocation of assets to SheepCo referred to in (*paragraph*) subsection (1)(e) is satisfied, and a second that assumes that that condition is not satisfied. 40

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- (3) The restructuring plan must specify that the percentage of the Board's assets that will be allocated to Merino Grower Investments Limited will be 7.2%, adjusted to account for the following items:
- (a) the liabilities of the Board on or after the restructuring day: 5
 - (b) amounts held by the Board, on the day before the restructuring day, specifically for groups of growers identified by the Board who produce particular categories of wool: 10
 - (c) actual or committed expenditure by the Board, before the restructuring day, in funding and capitalising Merino Grower Investments Limited and Wool Equities Limited:
 - (d) disproportionate expenditure by the Board between 1 July 1995 and 30 June 2001 on behalf of growers farming merino sheep. 15
- (4) The constitution for Wool Equities Limited that is contained in the restructuring plan under **subsection (1)(i)** must provide that, for 2 years from the date of the first allocation of shares to growers in Wool Equities Limited,— 20
- (a) a shareholder must not sell shares in Wool Equities Limited to a person other than another grower; and
 - (b) a person who is not a grower must not buy shares or become a shareholder in Wool Equities Limited; and 25
 - (c) a shareholder must not acquire, directly or indirectly, in concert or otherwise, more than 5% of the total number of shares in Wool Equities Limited.
- (5) The constitution for Merino Grower Investments Limited that is contained in the restructuring plan under **subsection (1)(i)** must provide that, for 2 years from the date of the first allocation of shares to growers in Merino Grower Investments Limited,— 30
- (a) a shareholder must not sell shares in Merino Grower Investments Limited to a person other than another grower; and 35
 - (b) a person who is not a grower must not buy shares or become a shareholder in Merino Grower Investments Limited; and

Struck out (unanimous)

- (c) a shareholder must not acquire, directly or indirectly, in concert or otherwise, more than 5% of the total number of shares in Merino Grower Investments Limited.

New (unanimous)

- (3) The restructuring plan must specify that the percentage of the Board's assets, as at the restructuring day, that will be allocated to merino wool growers will be 7.2%, adjusted to account for the following items: 5
- (a) the liabilities of the Board on or after the restructuring day: 10
- (b) amounts held by the Board, on the day before the restructuring day, specifically for groups of growers identified by the Board who produce particular categories of wool: 15
- (c) actual or committed expenditure by the Board, before the restructuring day, in funding and capitalising merino wool growers and other costs incurred specifically on behalf of the merino sector since 30 June 2001: 20
- (d) the merino sector's share of generic costs of restructuring funded from reserves since 30 June 2001:
- (e) disproportionate expenditure by the Board on behalf of merino wool growers, between 1 July 1995 and 30 June 2001, of \$782,000 (being the amount agreed by Merino Grower Investments Limited and the Board).

19A Constitutions

- (1) The constitution for Wool Equities Limited that is contained in the restructuring plan under **section 19** must provide that, for 2 years from the date of the first allocation of shares to growers in Wool Equities Limited,— 25
- (a) a shareholder must not sell shares in Wool Equities Limited to a person other than another grower; and 30
- (b) a person who is not a grower must not buy shares or become a shareholder in Wool Equities Limited; and
- (c) a shareholder and an associated person must not acquire, hold, or control voting rights for, directly or

New (unanimous)

- indirectly, in concert or otherwise, more than 5% of the
total number of shares in Wool Equities Limited.
- (2) The constitution for Merino Grower Investments Limited that is contained in the restructuring plan under **section 19** must provide that, for 2 years from the date of the first allocation of shares to growers in Merino Grower Investments Limited,—
- (a) a shareholder must not sell shares in Merino Grower Investments Limited to a person other than another grower; and
- (b) a person who is not a grower must not buy shares or become a shareholder in Merino Grower Investments Limited; and
- (c) a shareholder and an associated person must not acquire, hold, or control voting rights for, directly or indirectly, in concert or otherwise, more than 5% of the total number of shares in Merino Grower Investments Limited.
- (3) A person who breaches **subsection (1)(c) or subsection (2)(c)** must—
- (a) take the steps that are necessary to ensure that the person is no longer in breach of either subsection; and
- (b) while the person remains in breach, not exercise or control the exercise of any voting rights that exceed the 5% limit.
- (4) An exercise of voting rights by or under the control of a person in breach of **subsection (1)(c) or subsection (2)(c)** is of no effect, and must be disregarded by the person responsible for counting the votes concerned.
- (5) Voting rights held or controlled by an associated person of a person are to be treated as voting rights held or controlled by that person.
- (6) A person is an **associated person** of another person if—
- (a) they are acting jointly or in concert; or
- (b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
- (c) they are related companies; or

New (unanimous)

- (d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
- (e) they are both, directly or indirectly, under the control of the same person.

5

Struck out (unanimous)**20 Share allocation plan**

- (1) The Board must ensure that the plans for share allocation referred to in **section 19(1)(h)**—
- (a) provide for the allocation and issue of shares in the company that may be exchanged or redeemed for redeemable preference shares, or ordinary shares— 10
- (i) in Wool Equities Limited, only to growers of sheep other than merino sheep; and
- (ii) in Merino Grower Investments Limited, only to growers of merino sheep; and 15
- (b) restrict the allocation and issue of shares to growers who were farming 250 or more sheep on 30 June 2002 and who derived income or who were entitled to derive income from wool from those sheep; and
- (c) provide that the proportion (and, therefore, number) of shares in the company to be allocated to a grower of merino sheep must be the same proportion that the average number of merino sheep of that grower (calculated under **subsection (2)**) bears to the total average number of merino sheep of all growers entitled to that allocation of shares; and 20 25
- (d) provide that the proportion (and, therefore, number) of shares in the company to be allocated to a grower of sheep other than merino sheep must be the same proportion that the average number of sheep other than merino sheep of that grower (calculated under **subsection (3)**) bears to the total average number of sheep other than merino sheep of all growers entitled to that allocation of shares; and 30
- (e) provide to growers allocated redeemable preference shares in the company the opportunity to convert those 35

Struck out (unanimous)

shares to cash or ordinary shares in Wool Equities Limited or Merino Grower Investments Limited within a specified period; and

- (f) provide that shares allocated to growers in the company are issued without payment; and 5
- (g) specify clearly the basis of allocation.

- (2) In **subsection (1)(c)**, the average number of merino sheep of a grower entitled to an allocation of shares under **subsection (1)(b)** is to be calculated in accordance with the following formula:

$$\frac{a}{b} \quad 10$$

where—

- a has the meaning given by **subsection (4)(a)**
- b has the meaning given by **subsection (4)(b)**.

- (3) In **subsection (1)(d)**, the average number of sheep other than merino sheep of a grower entitled to an allocation of shares under **subsection (1)(b)** is to be calculated in accordance with the following formula: 15

$$\frac{a}{b} \quad 20$$

where—

- a has the meaning given by **subsection (5)**
- b has the meaning given by **subsection (4)(b)**.

- (4) In—
- (a) **subsection (2)**, **a** is the aggregate number of merino sheep farmed by a grower— 25
- (i) as at 30 June 2000, 30 June 2001, and 30 June 2002, if the grower farmed merino sheep on all 3 of those dates; or
- (ii) as at any 2 of the dates specified in **subparagraph (i)**, if the grower farmed merino sheep on 2 of those 3 dates; or 30
- (iii) as at 1 of the dates specified in **subparagraph (i)**, if the grower farmed merino sheep on just 1 of those 3 dates; and 35
- (b) **subsections (2) and (3)**, **b** is—
- (i) 3, if the grower farmed sheep on all 3 of the dates specified in **paragraph (a)(i)**; or

Struck out (unanimous)

- (ii) 2, if the grower farmed sheep on 2 of those 3 dates; or
- (iii) 1, if the grower farmed sheep on just 1 of those 3 dates.
- (5) In **subsection (3), a** is the aggregate number of sheep other than merino sheep farmed by a grower—
- (a) as at 30 June 2000, 30 June 2001, and 30 June 2002, if the grower farmed sheep other than merino sheep on all 3 of those dates; or
- (b) as at any 2 of the dates specified in **paragraph (a)**, if the grower farmed sheep other than merino sheep on 2 of those 3 dates; or
- (c) as at 1 of the dates specified in **paragraph (a)**, if the grower farmed sheep other than merino sheep on just 1 of those 3 dates.
- (6) The Board must take all practicable steps to identify growers for the purpose of the share allocation plan.
- (7) The Board will request information from growers to facilitate preparation of the share allocation plan. The Board may exclude a grower from the share allocation plan if the grower fails unreasonably to provide the information so requested.

New (unanimous)

- 20 Share allocation plans**
The Board must ensure that the share allocation plans satisfy **sections 20A to 20G**.
- 20A Eligibility**
The 3 share allocation plans are to restrict the allocation and issue of shares to growers who were farming 250 or more sheep on 30 June 2002 and who derived income, or were entitled to derive income, from wool from those sheep.
- 20B Size of entitlement for non-merino growers**
- (1) The share allocation plan for non-merino growers must provide that the proportion, and therefore number, of shares in the company to be allocated to a non-merino grower must be the

New (unanimous)

same proportion that the average number of non-merino sheep of that grower (calculated under **subsection (2)**) bears to the total average number of non-merino sheep of all growers entitled to an allocation of shares for non-merino growers.

- (2) The average number of non-merino sheep of a non-merino grower to be used in the calculation required by **subsection (1)** is to be calculated using the following formula: 5

$$\frac{a}{b}$$

where— 10

a is the greater of the numbers derived from the following:

- (a) the aggregate number of non-merino sheep farmed by a non-merino grower— 15
- (i) as at 30 June 2000, 30 June 2001, and 30 June 2002, if the grower farmed non-merino sheep on all 3 of those dates; or
- (ii) as at any 2 of the dates specified in **subparagraph (i)**, if the grower farmed non-merino sheep on 2 of those 3 dates; or 20
- (iii) as at 1 of the dates specified in **subparagraph (i)**, if the grower farmed non-merino sheep on just 1 of those 3 dates; or
- (b) the number of non-merino sheep farmed by a non-merino grower on 30 June 2002 25

b is—

- (a) 3, if **a** is calculated according to **paragraph (a)(i)** of the item relating to **a**;
- (b) 2, if **a** is calculated according to **paragraph (a)(ii)** of the item relating to **a**; 30
- (c) 1, if **a** is calculated according to **paragraph (a)(iii) or (3)(b)** of the item relating to **a**.

20C Size of entitlement for merino wool growers

- (1) The share allocation plan for merino wool growers must provide that the proportion, and therefore number, of shares in the company to be allocated to a merino grower must be the same proportion that the average number of merino sheep of that 35

New (unanimous)

- grower (calculated under **subsection (2)**) bears to the total average number of merino sheep of all growers entitled to an allocation of shares for merino wool growers.
- (2) The average number of merino sheep of a merino grower to be used in the calculation required by **subsection (1)** is to be calculated using the following formula: 5
- $$\frac{a}{b}$$
- where—
- a** is the greater of the numbers derived from the following: 10
- (a) the aggregate number of merino sheep farmed by a merino grower— 15
- (i) as at 30 June 2000, 30 June 2001, and 30 June 2002, if the grower farmed merino sheep on all 3 of those dates; or
- (ii) as at any 2 of the dates specified in **subparagraph (i)**, if the grower farmed merino sheep on 2 of those 3 dates; or
- (iii) as at 1 of the dates specified in **subparagraph (i)**, if the growers farmed merino sheep on just 1 of those 3 dates; or 20
- (b) the number of merino sheep farmed by a merino grower on 30 June 2002.
- b** is— 25
- (a) 3, if **a** is calculated according to **paragraph (a)(i)** of the item relating to **a**;
- (b) 2, if **a** is calculated according to **paragraph (a)(ii)** of the item relating to **a**;
- (c) 1, if **a** is calculated according to **paragraph (a)(iii)** or **(3)(b)** of the item relating to **a**. 30

20D Method of allocation for non-merino growers

- (1) The share allocation plan for non-merino growers will require the company, Wool Equities Limited and eligible non-merino growers to implement the transactions, and achieve the outcomes, specified in this section. 35
- (2) On the restructuring day, the company will issue exchangeable shares, redeemable shares (both non-voting shares) and

New (unanimous)

- | | | |
|---|--|----|
| | ordinary shares (voting shares) to eligible non-merino growers in the proportions calculated under section 20B . | |
| (3) | Wool Equities Limited will be granted an option to purchase the ordinary shares in the company at the time those ordinary shares are issued by the company. | 5 |
| (4) | The company will redeem the exchangeable shares for the shares it holds in Wool Equities Limited, with the outcome that eligible non-merino growers will own all the shares in Wool Equities Limited. | |
| (5) | Wool Equities Limited will acquire all the ordinary shares in the company by exercising the option referred to in subclause (3) , with the outcome that Wool Equities Limited will own all of the voting shares in the company. | 10 |
| (6) | The company will redeem the redeemable shares for cash and eligible non-merino growers will have the opportunity to reinvest all or some of the proceeds of redemption in a further issue of shares by Wool Equities Limited. | 15 |
| (7) | Subsections (1) to (6) describes the steps for allocation and issue of shares to non-merino growers in broad terms. The share allocation plan for non-merino growers will outline those steps, and their timing, in precise detail. | 20 |
|
 | | |
| 20E Method of allocation for merino wool growers | | |
| (1) | The share allocation plan for merino wool growers will require the company, Merino Grower Investments Limited and eligible merino wool growers to implement the transactions, and achieve the outcomes, specified in this section. | 25 |
| (2) | Before the restructuring day, the company will convert its loan to Merino Grower Investments Limited into mandatory convertible notes, those mandatory convertible notes converting into shares. | 30 |
| (3) | On the restructuring day, the company will issue exchangeable shares and redeemable shares (both non-voting shares) to eligible merino growers in the proportions calculated under section 20C . | |
| (4) | The company will redeem the exchangeable shares by transferring the mandatory convertible notes it holds in Merino | 35 |

New (unanimous)

- Grower Investments Limited, with the outcome that eligible merino growers will hold the mandatory convertible notes.
- (5) The company will redeem the redeemable shares for cash but eligible merino growers will not have the opportunity to reinvest any of that cash. 5
- (6) **Subsections (1) to (5)** describe the steps for allocation and issue of shares to merino wool growers in broad terms. The share allocation plan for merino wool growers will outline those steps, and their timing, in precise detail.
- 20F Identification of growers** 10
The Board must take all practicable steps to identify and register growers for the purpose of the share allocation plans.
- 20G Other contents of share allocation plans**
The share allocation plans—
- (a) must provide that shares or other instruments allocated to growers are allocated and issued without payment; 15
and
- (b) must specify clearly the basis for allocation.
- 21 Company constitution must include certain matters**
- (1) The Board must ensure that the company's constitution in the restructuring plan provides as follows, for the period specified in **subsection (2)**: 20
- (a) that it is the statutory and corporate duty and obligation of the company and its directors to allocate expeditiously the assets of the company in accordance with this Act: 25
- (b) that the directors must be appointed in accordance with **sections 14 and 15**:
- (c) that shares in the company held by Wool Equities Limited must not be sold: 30
- (d) that no dividends are payable to Wool Equities Limited.
- (2) The period referred to in **subsection (1)** is the period until the later of the following dates:

- (a) the date on which the Minister receives the final report on implementation of the restructuring plan under **section 49**; and
- (b) the date on which the company ceases to be responsible for administering the levy. 5

22 Minister's consent needed to certain changes

- (1) The constitutional provisions for Wool Equities Limited and Merino Grower Investments Limited required by **section 19** may not be amended or revoked, without the written consent of the Minister, until after the periods specified in that section. 10
- (2) The provisions for the company constitution required by **section 21** may not be amended or revoked, without the written consent of the Minister, until after the period specified in that section.
- (3) An amendment or revocation approved by the Minister must be consistent with the requirements in **sections 19 and 21**. 15

New (unanimous)

22A Board functions

- (1) The Board has the functions and power necessary to do the things required by Parts 2 and 3, even though the Board may have done some of those things before this Act became law. 20
- (2) The Board undertook the function required by **section 20F** of registering growers eligible for allocations under the share allocation plans, as required by section 20F.
- (3) The fact that the Board undertook that function with reference to the period of 10 January 2003 to 2 May 2003 does not invalidate the exercise of that function. 25

Ministerial involvement with restructuring plan

23 Approval of restructuring plan

- The Minister must, as soon as practicable after receiving a restructuring plan, by notice in writing to the Board,— 30
- (a) approve it; or
 - (b) decline to approve it.

Struck out (unanimous)

- (2) The Minister may decline to approve the plan only if the Minister is not satisfied that it complies with the requirements of this Act.

24 Revision of restructuring plan

If the Minister declines to approve the restructuring plan,— 5

- (a) the Minister must indicate the grounds for declining approval; and
- (b) the Minister must direct the Board to prepare and submit a revised plan; and
- (c) the Board must submit a revised restructuring plan to the Minister, not later than 10 working days after the date on which approval was declined (or a later date that the Minister may allow), together with a certificate signed by at least 2 directors of the Board certifying that the revised plan complies with **sections 19 to 21**. 15

25 Approval of revised restructuring plan

- (1) As soon as practicable after receiving a revised restructuring plan, the Minister must—

- (a) approve the plan by notice in writing to the Board; or
- (b) if the Minister considers that the revised plan requires further amendment to comply with the requirements of this Act,— 20
 - (i) make any amendments to the plan that the Minister considers necessary; and
 - (ii) approve the plan (as amended) by notice in writing to the Board, which notice must be accompanied by a copy of the plan as approved. 25

- (2) Before making amendments to a restructuring plan under this section, the Minister must advise the Board of the Minister's intention to do so and must give the Board a reasonable opportunity to make submissions on the matter. 30

26 Failure to submit restructuring plan

- (1) If the Board has not (*given*) submitted a restructuring plan to the Minister (*by 16 May 2003*) within the time specified in section 18(1), or has not given the Minister a revised restructuring plan (*by the date required*) within the time specified by 35

section 24, the Minister must arrange for a restructuring plan to be prepared and the Minister has the power necessary for that purpose.

- (2) **Sections 19 to 21 and 24** apply to a restructuring plan prepared under **subsection (1)** as if the restructuring plan were a revised restructuring plan given to the Minister by the Board. 5
- (3) The Minister and the Department that is responsible for administering this Act are entitled to be reimbursed by the Board for the costs and expenses that they incur in taking action under **subsection (1)**. 10

27 Minister to notify restructuring day

As soon as practicable after approving a restructuring plan or a revised restructuring plan, the Minister must notify the restructuring day in the *Gazette*.

Taxation

15

28 Tax treatment of issue of shares

- (1) The issue by the company, in accordance with the share allocation plan in the restructuring plan, of shares to a person who is a grower—
- (a) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968; and 20
- (b) is not a dividend for the purposes of the Income Tax Act 1994; and
- (c) is not otherwise gross income of the person for the purposes of the Income Tax Act 1994. 25
- (2) For the purposes of the Income Tax Act 1994, if the company, in accordance with the share allocation plan in the approved restructuring plan, issues shares to a grower (*who is not a grower of merino sheep*) of sheep other than merino sheep, the grower is to be regarded as having, at all times prior to the restructuring day,—
- (a) held those shares; and
- (b) subject to section OD 5(5) of the Income Tax Act 1994, held any voting interest or market interest attributable to those shares. 30 35
- (3) For the purposes of the definition of **available subscribed capital** in section OB 1 of the Income Tax Act 1994, the company—

- (a) is to be treated as having received an amount of \$47,720,400 in consideration for the issue of shares on the restructuring day; and
- (b) the available subscribed capital that arises under **paragraph (a)** is to be treated as allocated, as available subscribed capital of and between the classes of shares of the company issued on the restructuring day to the growers, in the proportions nominated by the company if the company nominates the proportions by notice in writing to the Commissioner of Inland Revenue within 30 days after the restructuring day; and
- (c) if the amount of an allocation of available subscribed capital referred to in **paragraph (b)** is not valid or an election is not received within the specified time period, the amount is to be treated as available subscribed capital in respect of the classes of shares issued on the restructuring day to growers in the same proportion as the number of shares issued in each class.
- (4) For the purposes of the Income Tax Act 1994, if shares in Merino Grower Investments Limited are transferred, under the restructuring plan, by the Merino Distribution Trust to a person who is a grower of merino sheep, the person is to be treated as having, at all times prior to that transfer,—
- (a) held those shares; and
- (b) subject to section OD 5(5) of the Income Tax Act 1994, held any voting interest or market interest attributable to those shares.
- (5) The proceeds from the sale, exchange, redemption, or other disposition of a share or other equity or similar instrument issued to, or distributed to, or acquired by, a grower as part of the restructuring process is not gross income for the purposes of the Income Tax Act 1994.
- (6) For the purposes of the Income Tax Act 1994, a person nominated to hold shares or rights on behalf of a grower in accordance with the approved restructuring plan, in the period between the restructuring day and the day that shares and cash are distributed by the nominee to a grower, is to be treated as a nominee.

29 Net losses

- (1) For the purposes of the Income Tax Act 1994, *(an amount calculated in accordance with **subsection (2)** and as agreed between the Board and Merino Grower Investments Limited, 7.2% of the net losses to be carried forward by the Board immediately prior to the restructuring day is to be treated as (if that amount were) a net loss incurred by Merino Grower Investments Limited prior to the restructuring day and not an amount incurred by the Board.* 5

Struck out (unanimous)

- (2) The amount of the net losses to be treated as a net loss incurred by Merino Growers Investments Limited is to be calculated in accordance with the following formula: 10

$$\frac{a}{b} \times c \quad 15$$

where—

- a is the portion of the Board's assets immediately prior to the restructuring day based on sheep numbers (calculated in accordance with **section 19**) owned by persons who are growers of merino sheep 20
- b is the total of the Board's assets immediately prior to the restructuring day
- c is the net losses to be carried forward by the Board immediately prior to the restructuring day. 30

30 Company treated as statutory producer board 25

- (1) The company is to be treated as a statutory producer board for the purposes of section OC 3 of the Income Tax Act 1994 for the period provided in **section 32** in which the company is responsible for administering the levy on wool imposed by **section 35**. 30
- (2) Section OC 3 of the Income Tax Act 1994 applies to expenditure of levies by the company under **section 32**.

31 Definitions

New (unanimous)

(1AA) In section 28(4) the **Merino Distribution Trust** means the discretionary trust settled by the Board by a trust deed dated 24 October 2001, whose trustees are Hugh Alexander Cameron, Allan Kane, John Ernest Nicol, and Ronald Thomas Small. 5

- (1) In the application of the definition of **shareholder decision making rights** in section OB 1 of the Income Tax Act 1994, **section 15** relating to the appointment of directors in the company in the period before the final report on the implementation of the restructuring plan is received by the Minister is not to be treated as being carried by shares. 10
- (2) In this subpart, **net loss** has the same meaning as in section OB 1 of the Income Tax Act 1994.

Levy 15

32 Company responsible for levy on wool

- (1) The company is responsible for administering the levy on wool imposed under **section 35** until the earlier of the following days: 20
- (a) the day before a levy becomes payable on wool on all sheep under a levy order made under the Commodity Levies Act 1990; or
 - (b) 30 June 2004.
- (2) The company must consult SheepCo on spending the levy.
- (3) The levy may be spent on— 25
- (a) research and development into sheep and wool, including research and development into—
 - (i) the rearing of sheep; and
 - (ii) increasing the quantity or quality of the wool produced by sheep in New Zealand; and 30
 - (iii) the harvesting, handling, preparation, and processing of wool; and
 - (iv) the manufacture of New Zealand wool into wool products; and

- (v) the handling, packaging, and product development of New Zealand wool and wool products; and
 - (b) encouraging the adoption of more efficient processes and practices for— 5
 - (i) the rearing of sheep in New Zealand; and
 - (ii) increasing the quantity or quality of the wool produced by sheep in New Zealand; and
 - (iii) the harvesting, handling, preparation, and processing of New Zealand wool; and 10
 - (iv) the manufacture of New Zealand wool into wool products; and
 - (v) the handling, packaging, and product development of New Zealand wool and wool products; and 15
 - (c) activities that persons are committed to provide to or for the Board under contracts in force as at the restructuring day; and
 - (d) collecting, processing, maintaining, and making available, information for the purposes of assisting production, investment, processing, and product development decisions on matters relevant to the New Zealand sheep and wool industries; and 20
 - (e) administering the collection and spending of the levy by the company. 25
- (4) The levy must be *(set)* on the basis and at the rate prescribed by the Board by the notice published in the *Gazette (that is in force on the day this Act comes into force)* on 17 April 2003.
- (5) Levy owing to the Board at the date this section comes into force is levy owing to the company. 30
- (6) The levy is taxable as income of the company.
- (7) Levy money collected but unspent at the time the company ceases to be responsible for administering the levy must be allocated as redeemable preference shares in Wool Equities Limited and Merino Grower Investments Limited. 35

33 Company may designate collection agent

- (1) The company may designate a person by written notice to collect levy for the company to assist the orderly and efficient payment of the levy.

- (2) The company may, by written notice to a collection agent, cancel that collection agent's designation.
- (3) A designation takes effect—
- (a) on a day (more than a month after the company gives the notice to the person) specified in the notice, if the notice specifies that day: 5
 - (b) a month after the company gives the notice to the person, in any other case.
- (4) The cancellation of a designation takes effect—
- (a) on a day specified in the notice, if the notice specifies a day: 10
 - (b) on the day the company gives the notice to the person, in any other case.
- (5) The company must—
- (a) keep a list of collection agents: 15
 - (b) take all practicable steps to ensure that every collection agent is regularly given, free of charge, a copy of the list:
 - (c) on payment of a reasonable fee fixed by the company, give a copy of the list to any other person who asks for it. 20

34 Specified activities

The following activities are **specified activities** for the purpose of this Act:

- (a) activity relating to dags containing wool crushing: 25
- (b) activities relating to wool and wool on the skin, carbonising, carding, combing, fellmongering, felting, knitting, needle-punching, scouring, slipping, sliver-knitting, spinning, tanning, tufting, washing, and weaving. 30

35 Levy on wool

- (1) This section imposes a levy on wool produced in New Zealand.
- (2) The levy is payable on wool when one of the following things first occurs: 35
- (a) when it is sold to or through a collection agent:
 - (b) when it is subjected to a specified activity by a collection agent:
 - (c) upon export from New Zealand.

- (3) The levy is payable in accordance with this Act.
- (4) In the following circumstances, the company may make a reasonable assessment of the value and weight of wool:
- (a) if the transaction that attracts the payment of the levy is not a sale; and 5
 - (b) if the basis for the calculation of the levy is or includes 1 or both of its value or weight.
- 36 Levy returns**
- (1) Every collection agent must complete returns of wool on which the levy is payable under **section 35** and give those returns to the company. 10
- (2) A levy return must be in a form determined by the company.
- (3) A levy return must be completed and given to the company,—
- (a) monthly, within 18 days of the end of the month for which it is made; or 15
 - (b) for wool sold at auction in New Zealand, within 18 days of the day of the auction.
- (4) A levy return for wool sold at auction must include all wool sold at the auction to or through the person making the return.
- 37 Payment** 20
- (1) A levy payable on wool must be paid by a collection agent in the following circumstances:
- (a) if the wool is sold through the collection agent;
 - (b) if the wool is sold to the collection agent (but not through another collection agent): 25
 - (c) if the wool is subjected to a specified activity by the collection agent.
- (2) A levy payable on wool that is exported must be paid by the exporter. If the exporter is not a collection agent, **sections 36, 39, and 41** apply to the exporter as if the exporter were a collection agent. 30
- (3) A person who makes a levy return must pay the levy—
- (a) by sending the levy amount with the levy return; or
 - (b) by sending the amount to the company or paying it into the company's bank account on or before the day on which the levy return is due. 35

- 38 Estimate may be disputed** 5
- (1) The company may estimate the amount of levy money payable under this Act for a relevant period, and make a written demand for payment of that amount, if—
- (a) a levy return is not made by the required time; or 5
 - (b) the company is not satisfied that the levy return is complete and correct.
- (2) A person who receives a demand under **subsection (1)** may dispute the estimated amount demanded within 10 days of the demand being made; however, this applies only to the initial demand and not to a substitute demand made under **subsection (3)(c)(i)**. 10
- (3) Within 15 days of receiving a notice of dispute, the company must—
- (a) consider the matters raised in it; and 15
 - (b) undertake any audit of the operations of the person concerned that the company thinks appropriate and the person allows; and
 - (c) by written notice to the person,—
 - (i) withdraw the demand, and substitute another for it; or 20
 - (ii) withdraw the demand, and indicate that no other demand will be substituted for it; or
 - (iii) confirm the demand.
- (4) A person to whom a demand is made under **subsection (1)** must pay the amount demanded to the company, or pay it into the company's bank account,— 25
- (a) within 18 days of the demand being made or any longer period the company may allow, unless the person has, within those 18 days, disputed the estimate under **subsection (2)**; or 30
 - (b) if the initial demand is disputed, within 18 days of the demand being confirmed or substituted, or any longer period the company may allow.
- 39 Collection agents may recover from owner** 35
- (1) A collection agent who pays levy money on wool that the collection agent did not, at the time of payment, own may recover the amount paid, or part of it, from the owner of the wool when the levy became payable.

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- (2) The collection agent may recover the amount under **subsection (1)** as a debt or by deducting the amount from money that is held by the agent but that belongs, or is payable to, the owner.
- 40 Refunds**
- (1) The company must refund levy money found to have been overpaid or paid in error to the appropriate person unless that person has already received reimbursement of the amount. 5
- (2) However, before paying a refund under **subsection (1)**, the company may—
- (a) require the person to be refunded to provide the company with the relevant levy returns and any other information justifying the refund and allowing the company to determine or check the amount of the refund; and 10
- (b) verify the returns and any information provided under **paragraph (a)** in any way it thinks fit. 15
- 41 Records to be kept**
- (1) Every person who makes a levy return under **section 36** or who pays levy money under **section 37** must keep accurate records of the payment and full particulars of the transaction to which the payment relates. 20
- (2) Those records must be preserved for not less than 2 years from the date they are made.
- 42 Levy to constitute debt due to company**
- (1) Payable levy is a debt due to the company and is recoverable as a debt by the company in any court of competent jurisdiction. 25
- (2) The company may assess, sue for, or recover levy money even if information has not been provided or a return has not been made.
- 43 Power of inspection** 30
- (1) An auditor appointed under **section 44** may exercise the powers specified in **subsection (2)** at any reasonable time within business hours in order to ascertain whether the requirements of the levy provisions (**sections 32 to 42**) of this Act are being met.
- (2) The powers referred to in **subsection (1)** are the power to— 35

- (a) enter a place of business of a collection agent (that is not a dwellinghouse) where a document relating to levy money, wool, or wool product is held or is likely to be held; and
 - (b) inspect a document referred to in **paragraph (a)**; and 5
 - (c) take or make copies of, or extracts from, a document inspected, and, for that purpose, the auditor may—
 - (i) take possession of and remove a document from the place where it is held, for a reasonable period:
 - (ii) require a person to reproduce, or assist the appointed auditor to reproduce, in usable form, any information recorded or stored on a document electronically or by other means. 10
- 44 Appointment of auditor**
- (1) The Minister may appoint a person referred to in **subsection (2)** as an auditor to exercise the powers in **section 43** if the company so requests. 15
 - (2) A person whom the Minister may appoint as an auditor under **subsection (1)** must be a chartered accountant (as defined in section 19 of the Institute of Chartered Accountants of New Zealand Act 1996). 20
 - (3) However, the Minister must not appoint a person as an auditor who is an officer or employee of—
 - (a) the company; or
 - (b) a collection agent; or 25
 - (c) a person who is or may be liable to pay levy.
 - (4) The Minister must supply an auditor appointed under this section with a warrant of authorisation that states the powers and duties of the auditor.
 - (5) An auditor who holds a warrant of authorisation issued under this section must, on the termination of that auditor's appointment, surrender that warrant to the Minister. 30
 - (6) A person appointed as an auditor is entitled to remuneration paid by the company.
- 45 Duties of auditor** 35
- (1) An auditor who exercises a power under **section 43** must, at the time of initial entry and, if requested by the occupier of the place of business, at a subsequent time, produce—

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- (a) the auditor's warrant of appointment; and
- (b) evidence of the auditor's identity.
- (2) If an auditor inspects documents under **section 43** when an occupier of the place inspected is not present, the auditor must leave prominently in the place a notice stating— 5
- (a) the day and time of entry; and
- (b) the purpose of entry; and
- (c) the name and business telephone number of the auditor; and
- (d) an address at which enquiries can be made. 10
- (3) If the auditor who inspects documents under **section 43** takes a document, article, or thing from the place inspected, the auditor must, on completing the inspection, leave prominently in the place a schedule of all documents, articles, and things taken. 15
- (4) If it is not practicable to prepare the schedule on completing the inspection, or if an occupier of the place inspected consents, the auditor who conducts the inspection must,—
- (a) instead of leaving the schedule, leave a notice stating that— 20
- (i) a document, article, or thing has been taken; and
- (ii) the schedule will be delivered to, left for, or posted to an occupier within 7 days of the inspection; and
- (b) within 7 days of the inspection,— 25
- (i) deliver the schedule to the occupier; or
- (ii) leave the schedule prominently in the place; or
- (iii) post the schedule by registered mail to the occupier.
- (5) The schedule must specify— 30
- (a) the documents, articles, and things taken; and
- (b) the place or places where they are being held; and
- (c) if more than 1 place is specified, the documents, articles, and things held in each place.
- (6) The auditor must report to the Minister and the company on any matters that the auditor considers relevant to the inspection. 35
- 46 Offences and self-incrimination**
- (1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who— 40

- (a) intentionally makes a false or misleading levy return; or
 - (b) intentionally fails or refuses to comply with **sections 36, 37, 38(4), or 41**; or
 - (c) wilfully prevents, obstructs, or hinders a person exercising or attempting to exercise any of the powers conferred by **section 43(1) and (2)**; or 5
 - (d) intentionally fails or refuses to make available to any person exercising any of the powers conferred by **section 43** any document relating to levy money, wool, or wool products. 10
- (2) A person is not excused from answering a question or giving any information or document under this Act on the ground that to do so may incriminate or tend to incriminate that person.
- (3) A self-incriminating statement or document made or given under this Act is not admissible as evidence in criminal proceedings against that person except on the prosecution for an offence against this Act or against section 108 of the Crimes Act 1961 in relation to that statement or document. 15

Database transfer 20

47 Transfer of database

The company may transfer the company's database containing the following information to an entity that is seeking a levy on wool or administering a levy on wool under the Commodity Levies Act 1990 for the purpose of conducting a referendum or administering a levy under that Act: 25

- (a) the names and addresses of growers; and
- (b) the number of sheep farmed by those growers.

Reporting

48 Annual report on implementation of restructuring plan 30

- (1) The directors of the company must provide annually to the Minister—
- (a) a report of its progress in implementing the restructuring plan; and
 - (b) the annual return of the company under section 214 of the Companies Act 1993 until a final report has been made in accordance with **section 49**. 35

- (2) As soon as reasonably practicable after receiving the report and annual return, the Minister must present them to the House of Representatives.

New (unanimous)

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|--|---|
| <p>(3) The directors of the company must send a copy of the report referred to in subsection 48(1)(a) to a person who was a grower immediately before the restructuring day who requests a copy of that report.</p> | 5 |
|--|---|

49 Final report on implementation of restructuring plan

- (1) As soon as reasonably practicable after the implementation of the restructuring plan is completed and all assets of the company are distributed in accordance with the plan, the directors of the company must arrange for the preparation of a final report on the implementation of the restructuring plan. 10
- (2) The report must contain audited financial statements.
- (3) The directors must send a copy of the report,— 15
- (a) on request, to a person who was a grower immediately before the restructuring day; and
- (b) to the Minister.
- (4) As soon as reasonably practicable after receiving the report the Minister must present it to the House of Representatives. 20

50 Report on levy

- (1) As soon as reasonably practicable after the company has ceased to collect levy, the directors of the company must arrange for the completion of a report on the collection and spending of the levy. 25
- (2) The report must contain audited financial statements.
- (3) The directors must send a copy of the report,—
- (a) on request, to a person who was a grower during the period that the levy was payable; and
- (b) to the Minister. 30
- (4) As soon as reasonably practicable after receiving the report, the Minister must present it to the House of Representatives.

*Notices, repeals, revocations, and amendments***51 Notices**

- (1) The company may give a person a notice under this Act by causing it to be—
- (a) delivered to the person; or 5
 - (b) addressed to the person and left at the person's home or business; or
 - (c) transmitted to the person at the person's home or business by facsimile; or
 - (d) transmitted to the person at the person's home or business by or through any other device or system of devices from or through which the person might reasonably be expected to receive it; or 10
 - (e) posted in a letter addressed to the person at the person's home or business. 15
- (2) For the purposes of **subsection (1)**, a person's home or business—
- (a) is the person's usual or last known place of abode or business; but
 - (b) includes any place whose address is specified by the person (for the purpose of communication) in any application, notice, or other document received from the person by the company. 20
- (3) If a notice is posted to a person by registered letter, it is to be treated as having been given to the person when it would have been delivered in the ordinary course of post; and, in proving delivery, it is sufficient to prove that the letter was properly addressed and posted. 25

52 Repeals

- The following Acts are repealed on the restructuring day: 30
- (a) the Wool Board Act 1997 (1997 No 107);
 - (b) the Wool Testing Authority Dissolution Act 1988 (1988 No 166).

53 Revocations

- The following regulations and orders are revoked on the restructuring day: 35
- (a) the Wool Board Regulations 1998 (SR 1998/135);
 - (b) the Wool Testing Authority Dissolution Act Commencement Order 1988 (SR 1988/319):

- (c) the Wool Testing Authority Dissolution Act Commencement Order 1989 (SR 1989/154).

54 Amendments to other Acts

- (1) On the restructuring day, the First Schedule of the Official Information Act 1982 is amended by omitting the item relating to the New Zealand Wool Board. 5
- (2) On the restructuring day, Schedule 15 of the Income Tax Act 1994 is amended by omitting the item relating to the New Zealand Wool Board.
- (3) On the restructuring day, section 37F of the Statistics Act 1975 is amended by omitting the item relating to the New Zealand Wool Board. 10

Legislative history

11 December 2002	Introduction (Bill 26–1)
19 March 2003	First reading and referral to Primary Production Committee
16 June 2003	Reported from Primary Production Committee (Bill 26–2)
