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Pork Industry Board Act 1997

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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An Act to consolidate and amend the Pork Industry Board Act 1982

1 Short Title and commencement

- (1) This Act may be cited as the Pork Industry Board Act 1997.
- (2) Sections 17 and 18 come into force on 1 August 1998.
- (3) The rest of this Act comes into force on the day on which it receives the Royal assent.

Part 1

Preliminary

2 Interpretation

In this Act, unless the context otherwise requires,—

annual general meeting means meeting held under section 17(1)

the Board, except when followed by the words “of directors”, means the New Zealand Pork Industry Board established by section 4(1)

the board of directors means directors of the Board constituting a quorum under clause 5(3) of Schedule 2

the Board’s activities means the Board’s past, present, and likely future objectives, operations, policies, and strategies; and includes how and to what extent the Board has taken account of farmer concerns

co-product means article or substance, not edible by people, derived wholly or substantially from slaughtered pigs

director means director of the Board

the Director-General means the chief executive for the time being of the Ministry

document means document in any form; and includes—

- (a) any writing on or in any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) a record, book, graph, or drawing; and
- (d) a photograph, film, negative, tape, disk, or other device in which 1 or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced

farmer concerns means concerns and views about the Board’s activities—

- (a) expressed directly to the Board by pig farmers, or by organisations representing the interests of pig farmers or groups of pig farmers; or
- (b) reported to the Board by people consulting pig farmers on the Board’s behalf

financial year means period of 12 months ending with 30 September

the former Act means the Pork Industry Board Act 1982

the former Board means the New Zealand Pork Industry Board established by section 4 of the former Act

kind includes description

the levy means the levy imposed by section 35(1)

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

levy return means return required to be made under section 36(1)

licensed premises means—

- (a) a licensed abattoir or licensed export slaughterhouse (within the meaning of the Meat Act 1981);

- (b) the premises of any animal product business within the meaning of the Animal Products Act 1999 in which pigs are slaughtered under a risk management programme registered under Part 2 of the Animal Products Act 1999 or a regulated control scheme made under Part 3 of that Act

licensee, in relation to premises of a kind referred to in paragraph (b) of the definition of licensed premises, means the operator of the animal product business concerned

the 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

the Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

occupier,—

- (a) in relation to any place physically occupied by any person, means that person; and
- (b) in relation to any other place, means the owner of the place; and
- (c) in relation to any place, includes any agent, employee, or other person, acting or apparently acting in the general management or control of the place

performance audit means performance and efficiency audit carried out, or required to be carried out, under section 28(1)

pig means animal of the genus *Sus*, whether used for breeding or the production of pork

pig farmer means person engaged in New Zealand in the business of farming pigs (whether in conjunction with any other business or not)

pork means the whole or any part of the dressed carcass of a slaughtered pig

pork product means anything that is—

- (a) pork; or
- (b) edible offal taken from a slaughtered pig; or
- (c) an article or substance intended for human consumption, that is derived wholly or substantially from a slaughtered pig or pigs

statement of strategic and consultative intent means the statement for the time being maintained under section 7(1).

Section 2 **licensed premises**: substituted, on 1 November 1999, by section 8(1) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

Section 2 **licensee**: inserted, on 1 November 1999, by section 8(1) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

3 Act binds the Crown

This Act binds the Crown.

Part 2
New Zealand Pork Industry Board**4 Establishment of Board**

- (1) This subsection establishes a body called the New Zealand Pork Industry Board.
- (2) The Board is a body corporate with perpetual succession.
- (3) The Board is the same body corporate as the former Board.
- (4) The Board's assets belong ultimately to pig farmers, and are for the time being held and administered for the benefit of pig farmers.

5 Object of Board

- (1) The object of the Board is to help in the attainment, in the interests of pig farmers, of the best possible net ongoing returns for New Zealand pigs, pork products, and co-products.
- (2) In pursuing its object, the Board must have regard to the desirability of the pork industry's making the best possible net ongoing contribution to the New Zealand economy.

6 Functions of Board

- (1) The functions of the Board are,—
 - (a) with a view both to increasing the volumes sold and to obtaining higher returns for each unit sold, to increase the demand for New Zealand pork products and co-products (in existing and new markets); and
 - (b) to maintain the confidence of consumers of pork products in the New Zealand pork and pig industries; and
 - (c) to help obtain improved access to overseas markets for New Zealand pork products and co-products; and
 - (d) to conduct (whether alone or jointly with other bodies) research and development into pigs, pork products, and co-products, including research and development into—
 - (i) the breeding, rearing, finishing, handling, transport, and slaughter of pigs, and the production of pork products and co-products; and
 - (ii) the handling, processing, packaging, product development, transport, and marketing of New Zealand pork products and co-products; and

- (e) to encourage the adoption of more efficient processes and practices for—
 - (i) the breeding, rearing, finishing, handling, transport, and slaughter of pigs, and the production of New Zealand pork products and co-products; and
 - (ii) the handling, processing, packaging, product development, transport, and marketing of New Zealand pork products and co-products; and
 - (f) to collect, process, maintain, and make available, information for the purposes of assisting production, investment, processing, product development, and marketing decisions in respect of—
 - (i) market requirements for pork products and co-products; and
 - (ii) other matters relevant to the New Zealand pig and pork industries; and
 - (g) to account to pig farmers on the Board's activities and its use of levy money and other resources; and
 - (h) to discuss the Board's activities with any persons and organisations in the New Zealand pork industry the Board thinks fit; and
 - (i) to perform such other functions as are conferred on the Board by this Act or any other enactment.
- (2) During the period commencing on the commencement of this Part and ending with the close of 30 September 2000,—
- (a) the Board may, for the purpose of helping to ensure that—
 - (i) there is an adequately wide genetic base for the New Zealand pig industry; and
 - (ii) New Zealand pig farmers may buy suitable pigs to rear,—
undertake the commercial breeding, rearing, and sale of pigs as if it were a function of the Board specified in paragraphs (a) to (f) of subsection (1); and
 - (b) subsections (5) and (6), and section 11, apply accordingly.
- (3) After the expiration of the period referred to in subsection (2) (as from time to time extended under subsection (4)), it is not a function of the Board to undertake the commercial breeding, rearing, or sale of pigs.
- (4) At any time 3 months or more before the expiration of the period referred to in subsection (2) (as from time to time extended under this subsection), the Governor-General may by Order in Council extend it for a further period not exceeding 12 months.
- (5) The Board may perform any of the functions specified in paragraphs (a) to (f) of subsection (1) (or any element of any of those functions) alone, or—

- (a) in a partnership or joint venture with; or
 - (b) by arranging for its performance by—
any other person or persons (including a company or companies in which the Board holds shares).
- (6) The Board may perform any of the Board's functions, or arrange for its performance, to the extent only that its performance is consistent with the Board's object.
- (7) It is also a function of the Board to report regularly to the Minister on—
 - (a) the performance and present state of the New Zealand pork industry; and
 - (b) the Board's achievement of its object; and
 - (c) the Board's performance of its functions; and
 - (d) any other matters the Board thinks fit or the Minister requests.
- (8) In the exercise of its functions, the Board must have regard to the need for it to have adequate financial reserves.
- (9) The Board must not determine that a function or element of a function is to be performed by a particular mechanism and entity (that is to say the Board, a partnership or joint venture, or some person other than the Board) unless it has—
 - (a) considered other mechanisms and kinds of entity that might reasonably be expected to be able to perform the function or element efficiently and effectively; and
 - (b) satisfied itself that the mechanism and entity are likely to be the most efficient and effective means of performing the function or element.

7 Board to prepare and maintain statement of strategic and consultative intent

- (1) The Board must prepare, from time to time reconsider and (if appropriate) amend, and maintain a written statement of—
 - (a) the Board's strategic intent in relation to—
 - (i) the nature and scope of its operations; and
 - (ii) its income (including levy income) and expenditure, objectives, performance targets, and policies; and
 - (iii) its significant assets; and
 - (b) how and to what extent the Board intends to consult pig farmers on the Board's activities, and (to the extent, if any, that it intends to arrange for people to consult pig farmers on its behalf) how farmer concerns should be reported back to it by people consulting pig farmers on its behalf.
- (2) The Board must make a copy of its current statement of strategic and consultative intent available free to any pig farmer who asks for one; and for that pur-

pose must ensure that there are available at every annual general meeting copies for pig farmers attending.

- (3) As soon as is practicable after an annual general meeting finishes, the Board must give the Minister a copy of its current statement of strategic and consultative intent.

8 Board to consult pig farmers

The Board must make reasonable efforts to consult pig farmers, in accordance with its statement of strategic and consultative intent, about the Board's activities.

9 Board to consult representative organisations

The Board must make reasonable efforts to consult about the Board's activities (often enough to keep it satisfactorily informed about changes of opinion and circumstance among pig farmers and other groups) organisations representing the interests of—

- (a) pig farmers generally; or
- (b) groups of pig farmers whose interests differ or are likely to differ from those of pig farmers generally (otherwise than simply because they farm in a particular region); or
- (c) other groups with a particular stake or interest in the New Zealand pork industry.

10 Board to take account of farmers' concerns and views

Subject to section 5, in performing its functions, or preparing, reconsidering, or amending its statement of strategic and consultative intent, the Board must take account of farmer concerns.

11 Powers of Board

- (1) Except as provided in this Act, the Board has—
- (a) the rights, powers, and privileges of a natural person; and
 - (b) the power to issue debentures; and
 - (c) the power to grant floating charges on the Board's undertaking or property, or any of it; and
 - (d) the power to do any other thing it is authorised to do by—
 - (i) this Act; or
 - (ii) any other enactment; or
 - (iii) any rule of law.
- (2) Paragraphs (b) to (d) of subsection (1) do not affect the generality of paragraph (a) of that subsection.

- (3) The Board must not exercise any of its rights, powers, or privileges, except for the purpose of—
- (a) achieving its object; or
 - (b) performing its functions; or
 - (c) entering into any financial transaction or financial obligation intended to—
 - (i) avoid or lessen any present or possible future risk to the Board's current or future income or assets; or
 - (ii) lessen any liability of the Board; or
 - (iii) avoid or lessen any possible future liability of the Board; or
 - (iv) maximise the Board's current or future income (whether net or gross).

12 International obligations

- (1) The Minister of the Crown who (under the authority of any warrant or with the authority of the Prime Minister) is in charge of international trade may give the Board a written notice, specifying—
- (a) a particular international obligation of New Zealand; and
 - (b) an element of the performance of the Board's functions or the exercise of the Board's powers to which, in the Minister's opinion, the obligation is relevant.
- (2) Until the notice is revoked, the Board must ensure that its performance or exercise of the element is consistent with the obligation.

13 Management of Board

- (1) Except as otherwise provided by this Act, the affairs of the Board must be managed by, or under the direction or supervision of, the board of directors.
- (2) The board of directors comprises—
- (a) 4 directors elected, in accordance with regulations made under this Act, by pig farmers; and
 - (b) at least 1, but not more than 2, directors (being people who, in the Board's opinion, are qualified by relevant expertise to be directors) appointed by the Minister on the Board's recommendation.
- (3) Before making any recommendation for the purposes of subsection (2)(b), the Board must prepare a list of possible appointees, taking particular care to ensure that there are included suitable women available for appointment.
- (4) The Board must not recommend a person whose name is not on the list; and in making its recommendation must take account of the desirability of its appointed directors' having, collectively, the background, experience, and expertise

likely to be most valuable to it (in the light of the background, experience, and expertise of its elected directors) in the performance of its functions.

- (5) The Minister must not appoint any person to be a director under subsection (2)(b) unless satisfied that the Board has complied with subsections (3) and (4) in recommending the person for appointment.
- (6) The Board, when making recommendations, and the Minister, when appointing directors, under subsection (2)(b) must take into account the desirability of staggering directors' terms of office so that a similar number of directors' terms will expire each year.
- (7) Until the earlier of—
 - (a) the expiration of 1 year from the commencement of this section; or
 - (b) the making of regulations under section 50(1)(g),—

Schedules 1 and 2 of the Pork Industry Board Act 1982 (as from time to time amended), notwithstanding their repeal by section 54, have effect as if the provisions of those schedules were regulations made under this Act, but as if every reference to a producer member were a reference to a director and every reference to a pork producer were a reference to a pig farmer.

Section 13(2)(a): amended, on 31 July 2002, by section 3(1) of the Pork Industry Board Amendment Act 2001 (2001 No 76).

Section 13(2)(b): amended, on 31 July 2002, by section 3(2)(a) of the Pork Industry Board Amendment Act 2001 (2001 No 76).

Section 13(2)(b): amended, on 31 July 2002, by section 3(2)(b) of the Pork Industry Board Amendment Act 2001 (2001 No 76).

14 Application of Part 2 of Commerce Act 1986

- (1) Nothing in Part 2 of the Commerce Act 1986 applies in respect of any act, matter, or thing done—
 - (a) by the Board (or by any agent, director, employee, or officer of the Board) under Part 4; or
 - (b) by any other person in compliance with any provision of that Part.
- (2) In the determination for the purposes of section 43(1) of the Commerce Act 1986 of whether any act, matter, or thing of a kind not referred to in subsection (1) is or was specifically authorised by any enactment or Order in Council made under any Act, no regard may be had to subsection (1).

15 Provisions applying to directors

The provisions in Schedule 1 apply to directors.

16 Provisions applying to Board and board of directors

The provisions in Schedule 2 apply to the Board and the board of directors.

Part 3

Administration

Meetings of pig farmers

17 Meetings of pig farmers

- (1) In every financial year, the Board must,—
 - (a) not later than 30 April in that financial year, fix the day (being a day not earlier than 3 months after the day on which it was fixed and not later than 31 July in that financial year) for a meeting of pig farmers; and
 - (b) on the day fixed, hold such a meeting.
- (2) For each region it for the time being recognises for the purpose, the Board must, in accordance with regulations made under this Act (if any), at least once in every financial year before the annual general meeting, call and hold a meeting of pig farmers.
- (3) The Board—
 - (a) may at any time, in accordance with regulations made under this Act (if any); and
 - (b) where any such regulations require it to do so, must,—
call and hold a special meeting of pig farmers.
- (4) Any pig farmer may attend any annual general meeting or special meeting of pig farmers held under this Act, even if it was resolved at the annual general meeting most recently held before it that pig farmers should be elected to represent other pig farmers in their regions at meetings of that kind held during the next financial year.
- (5) Except as provided in this Act and in regulations made under it, the procedure for a meeting held under this section is to be determined at that meeting.

18 Matters for consideration at annual general meeting

- (1) The Board must ensure that at every annual general meeting—
 - (a) its statement of strategic and consultative intent is discussed; and
 - (b) enough time is allocated to the discussion to give pig farmers a reasonable opportunity to participate in and contribute to it; and
 - (c) directors participate responsibly in the discussion and, in particular, respond helpfully to all reasonable questions and concerns raised by pig farmers about—
 - (i) the statement itself; or
 - (ii) the Board's strategic intent in relation to any of the matters referred to in section 7(1)(a); or

- (iii) how and to what extent it intends to consult pig farmers on the Board's activities, and (to the extent, if any, that it intends to arrange for people to consult pig farmers on its behalf) how farmer concerns should be reported back to it by people consulting pig farmers on its behalf.
- (2) The Board must ensure that at every annual general meeting resolutions are considered and voted on in relation to each of the following matters:
 - (a) whether to approve the Board's recommendation in respect of the appointment or reappointment of an auditor to audit the Board's financial statements for the current financial year:
 - (b) whether pig farmers should be elected to represent other pig farmers in their regions—
 - (i) at annual general meetings; or
 - (ii) at special meetings; or
 - (iii) at meetings of either kind,—
held during the next financial year:
 - (c) if it has been resolved that pig farmers should be elected to represent other pig farmers in their regions at meetings of any kind held during the next financial year, whether (and if so to what extent) they will be entitled to have the expenses they incur in attending the meetings reimbursed by the Board:
 - (d) where and when the next annual general meeting should be held:
 - (e) such other matters as may be prescribed by regulations made under this Act.
- (3) Subject to section 30(4)(b), the Board may put before any annual general meeting resolutions to approve either or both of the following matters:
 - (a) terms of reference for a proposed performance audit:
 - (b) giving the Board authority to select and appoint a person to conduct it.
- (4) A resolution passed at an annual general meeting under subsection (2) (in respect of any matter referred to in any of paragraphs (a) to (c) of that subsection) is binding on the Board according to its tenor.
- (5) The Board may put before any annual general meeting a resolution to approve maximum annual aggregate remuneration and benefits to be paid to directors (for services as a director) during the next financial year.
- (6) Notwithstanding subsection (5), the Board may put before any annual general meeting a resolution to approve maximum annual aggregate remuneration and benefits (being greater than the maximum annual aggregate last approved under that subsection) to be paid to directors (for services as a director) during the current financial year.

*Remuneration of directors, and indemnity and insurance of directors,
employees, etc*

19 Remuneration of directors

- (1) Subject to subsections (2) to (4), there must be paid to each director such remuneration and benefits as the Board from time to time determines.
- (2) During any financial year to which a resolution under section 18(5) (or, as the case requires, section 18(6)) applies, the Board must not pay to directors (for services as a director) remuneration and benefits that are in the aggregate more than the maximum aggregate remuneration and benefits approved by the resolution.
- (3) During any financial year after the first year to which a resolution under section 18(5) applies (being a year to which neither a resolution under section 18(5) nor a resolution under section 18(6) applies), the Board must not pay to directors (for services as a director) remuneration and benefits that are in the aggregate more than the maximum aggregate remuneration and benefits approved by the most recently passed resolution under section 18(5).
- (4) During any financial year before the first year to which a resolution under section 18(5) applies, the Board must not—
 - (a) pay to the Chairperson of the Board (for services as Chairperson of the Board and a director) remuneration and benefits whose sum is greater than the sum of the fees, salary, and allowances paid to the Chairman of the former Board during the last complete financial year before the commencement of this section; or
 - (b) pay to the Deputy Chairperson of the Board (for services as Deputy Chairperson of the Board and a director) remuneration and benefits whose sum is greater than the sum of the fees, salary, and allowances paid to the Deputy Chairman of the former Board during the last complete financial year before the commencement of this section; or
 - (c) pay to any other director (for services as a director) remuneration and benefits whose sum is greater than the average sum of the fees, salary, and allowances paid to members (other than the Chairman and Deputy Chairman) of the former Board during the last complete financial year before the commencement of this section.
- (5) In this section and section 18, **benefit**,—
 - (a) in relation to any goods or service of a non-monetary nature provided to or for a director or put at a director's disposal, means the monetary value of those goods or that service; but
 - (b) does not include (or include the monetary value of)—

- (i) any insurance of any kind in respect of any of the matters specified in paragraphs (a) and (b) of section 20(2) provided or paid for by the Board; or
- (ii) any thing done or payment made by the Board in indemnifying a director in respect of any matters specified in paragraphs (a) and (b) of section 20(2).

20 Restrictions on indemnity and insurance

- (1) In this section and sections 21 to 23,—

the corporation,—

- (a) in relation to an official in his or her capacity as a director, former director, officer, former officer, employee, or former employee, of the Board, means the Board; and
- (b) in relation to an official in his or her capacity as a director, former director, officer, former officer, employee, or former employee, of a subsidiary of the Board, means the subsidiary

effect insurance includes pay, whether directly or indirectly, the costs of any insurance; and **effecting insurance** has a corresponding meaning

indemnify includes relieve or excuse from liability, whether before or after the liability arises; and **indemnification** and **indemnity** have corresponding meanings

New Zealand company means company within the meaning of section 2(1) of the Companies Act 1993

official means person who is a director, former director, officer, former officer, employee, or former employee, of the Board or a subsidiary of the Board

proceeding includes claim

subsidiary of the Board means body corporate (whether or not a New Zealand company) that, if it and the Board were each a New Zealand company, would be a subsidiary of the Board within the meaning of section 5 of the Companies Act 1993.

- (2) Except as provided in sections 21 to 23, the Board must not indemnify or agree to indemnify an official, or directly or indirectly effect insurance for an official, in respect of—
- (a) liability for any act or omission in the official's capacity as an official of the corporation; or
 - (b) costs incurred by the official in defending or settling any proceeding relating to any such liability.
- (3) An indemnification or agreement to indemnify effected or entered into in breach of subsection (2) is void.

- (4) If the Board becomes aware that any amount has been paid in breach of subsection (2),—
- (a) the Board must take all reasonable steps to recover it from the person to whom it was paid or the person on whose behalf it was paid; or
 - (b) if—
 - (i) it is impossible, impracticable, or in all the circumstances inappropriate to recover the amount from the person to whom it was paid; and
 - (ii) it is impossible, impracticable, or in all the circumstances inappropriate to recover the amount from the person on whose behalf it was paid,—the Board must take all reasonable steps to recover an equivalent amount from the person or persons responsible for paying the amount in breach of that subsection.
- (5) The board of directors must ensure that particulars of every indemnification of or agreement to indemnify an official, and particulars of all insurance effected for any official,—
- (a) are as soon as is possible recorded in the records of the Board; and
 - (b) are retained by the Board.

Compare: 1993 No 105 s 162

21 Permitted indemnities

- (1) The Board may indemnify or agree to indemnify an official for any costs incurred by the official in any proceeding relating to liability for any act or omission in the official's capacity as an official of the corporation if—
- (a) judgment is given in the official's favour; or
 - (b) the official is acquitted; or
 - (c) the proceeding is discontinued, and its discontinuance has not arisen during or as a consequence of its settlement.
- (2) The Board may indemnify or agree to indemnify an official in respect of liability (to any person other than the Board or any subsidiary of the Board) for any act or omission in the official's capacity as an official of the corporation, other than a liability of a kind described in subsection (4).
- (3) The Board may indemnify or agree to indemnify an official in respect of costs incurred by the official in defending or settling any proceeding relating to any liability (to any person other than the Board or any subsidiary of the Board) for any act or omission in the official's capacity as an official of the corporation, other than a liability of a kind described in subsection (4).
- (4) In relation to any official, the kinds of liability referred to in subsections (2) and (3) are—

- (a) criminal liability;
- (b) liability in respect of an act or omission in the official's capacity as a director of the Board that is in breach of the duty imposed by clause 1 of Schedule 1;
- (c) liability in respect of an act or omission in the official's capacity as a director of a subsidiary of the Board that, if the subsidiary and the Board were each a New Zealand company, would be in breach of the duty imposed by section 131(1) of the Companies Act 1993;
- (d) liability in respect of an act or omission in the official's capacity as an officer or employee of the corporation that is in breach of any fiduciary duty owed by the official to the corporation.

Compare: 1993 No 105 s 162

22 Permitted insurance for directors

- (1) The Board may, with the prior approval of the board of directors, effect insurance for a director of the Board in respect of—
 - (a) liability (not being criminal liability) for any act or omission in the director's capacity as a director, officer, or agent of the Board or a subsidiary of the Board; or
 - (b) costs incurred by the director in defending or settling any proceeding relating to any such liability; or
 - (c) costs incurred by the director in defending any criminal proceeding, in respect of an act or omission in the director's capacity as a director, officer, or agent of the Board or a subsidiary of the Board, in which the director is acquitted.
- (2) The directors who vote in favour of the Board's effecting insurance under subsection (1) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Board.
- (3) Where—
 - (a) insurance not authorised by subsection (1) is effected for any director; or
 - (b) insurance authorised by subsection (1) is effected for any director, but—
 - (i) subsection (2) has not been complied with; or
 - (ii) subsection (2) has been complied with, but reasonable grounds did not exist for the opinion set out in the certificate given under it,—the director is personally liable to the Board for the cost of effecting the insurance, except to the extent that the director proves that it was fair to the Board at the time the insurance was effected.

Compare: 1993 No 105 s 162

23 Permitted insurance for other officials

- (1) The Board may, with the approval of the board of directors (given before or after the insurance is effected), effect insurance for any official in respect of—
 - (a) liability (not being criminal liability) for any act or omission in the official's capacity as an official of the corporation; or
 - (b) costs incurred by the official in defending or settling any proceeding relating to any such liability; or
 - (c) costs incurred by the official in defending any criminal proceeding, in respect of an act or omission in the official's capacity as an official of the corporation, in which the official is acquitted.
- (2) Subsection (1) does not authorise the Board to effect insurance for any director of the Board.
- (3) If it becomes aware that any insurance permitted by subsection (1) has been effected without its approval, the Board must promptly give its approval or cancel the insurance.
- (4) If it becomes aware that any insurance not permitted by subsection (1) has been effected without its approval, the Board must immediately cancel the insurance.

Compare: 1993 No 105 s 162

*Other matters***24 Board to prepare financial statements**

- (1) As soon as is practicable after the last day of each financial year but before the following 1 March, the Board must prepare—
 - (a) financial statements for the Board for that year; and
 - (b) financial statements for the Board and every subsidiary (within the meaning of section 5 of the Companies Act 1993) of the Board for that year.
- (2) The financial statements must be prepared in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013).

Section 24(1)(b): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 24(2): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

25 Audit of financial statements

- (1) Subject to subsection (2),—
 - (a) the statements referred to in section 24 must be audited by an auditor appointed or reappointed by the Board within 12 months before the end of the period to which the statements relate; but

- (b) the Board must not appoint or reappoint an auditor without the approval of pig farmers obtained, within 12 months before the end of the period to which the statements relate, at an annual general meeting.
- (2) Where, at the end of the period to which any statements referred to in section 24 relate, there is no person appointed auditor under subsection (1), the statements must be audited by an auditor appointed by the Minister.
- (2A) The person appointed as the auditor must be the Auditor-General or a person who is a qualified auditor within the meaning of section 35 of the Financial Reporting Act 2013.
- (3) For the purposes of the audit of any statement referred to in section 24, an auditor appointed under this section has, and may exercise and perform, all the functions, duties, and powers of an auditor under the Companies Act 1993.
- (4) Where the Board or the Minister appoints the Auditor-General to audit any statements, the Auditor-General may audit them.

Section 25(2A): inserted, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 25(4): amended, on 1 July 2001, pursuant to section 52 of the Public Audit Act 2001 (2001 No 10).

26 Remuneration of auditor

For auditing its financial statements, the Board must pay the person who audits them—

- (a) the remuneration agreed between the Board and the person, if the Board appointed the person:
- (b) the remuneration agreed between the Minister and the person (after the Minister has consulted the Board), if the Minister appointed the person.

27 Annual report and statements to be presented to House of Representatives

- (1) As soon as is practicable after the statements referred to in section 24 have been prepared in respect of any financial year and audited, the Board must prepare and give to the Minister—
 - (a) a report of its operations and proceedings for the year, including—
 - (i) a report on the exercise of its statutory powers during the year; and
 - (ii) details of all particulars of indemnity and insurance recorded during the year under section 20(5); and
 - (b) a copy of the statements and the report of its auditor on them; and
 - (c) a report of the matters required to be included in the annual report of a company by paragraphs (e), (f), and (g) of section 211(1) of the Companies Act 1993; and those paragraphs apply as if references to—
 - (i) an accounting period were references to that year; and

- (ii) a company were references to the Board; and
 - (iii) a director or former director were references to a director or former director of the Board; and
 - (d) the maximum annual aggregate remuneration and benefits approved for that year; and
 - (e) where a resolution under section 18(5) applicable to the next financial year was approved at an annual general meeting in that year, the maximum annual aggregate remuneration and benefits approved by that resolution.
- (2) As soon as is practicable after receiving copies of any such report or copy, the Minister must present a copy of it to the House of Representatives.
- (3) The Board must, without charge, make copies of the reports and statements most recently given to the Minister under subsection (1) available to all pig farmers who ask for them, and for that purpose must ensure that there are available at every annual general meeting copies for pig farmers attending.

Performance and efficiency audits

28 Performance and efficiency audits

- (1) From time to time there must be conducted, in accordance with this section and sections 29 to 34, an audit of how effectively and efficiently the Board is performing in relation to the achievement of its object in terms of—
- (a) the Board's performance of its functions and use of its powers under this Act; and
 - (b) the objectives, policies, and strategies established or put in place by the Board and any operating companies of the Board; and
 - (c) the matters referred to in paragraphs (a) and (b) of section 7(1); and
 - (d) the procedures adopted by the Board and any operating companies.
- (2) While a performance audit relates to how effectively and efficiently the Board is performing, the person conducting it—
- (a) must conduct it on the basis of—
 - (i) the Board's performance on the day to which it relates; and
 - (ii) the Board's prospective future performance; but
 - (b) may have regard to the Board's performance during the 5 years before the day to which it relates.
- (3) A performance audit includes the making of recommendations as to how the Board might perform better in respect of all or any of the matters specified in subsection (1).

29 Timing of performance audits

- (1) The first performance audit must be conducted as soon as is practicable after 1 October 2000; and must relate to that day.
- (2) Later performance audits must be conducted as soon as is practicable after—
 - (a) 1 October in the year 5 years after the day to which the most recent audit related; or
 - (b) any earlier 1 October fixed by the Board at least 12 months before that day;—and must relate to that 1 October.
- (3) The person conducting a performance audit may, before the day to which it relates,—
 - (a) undertake any preliminary work:
 - (b) examine, consider, or investigate, any action, circumstance, event, or inaction, that has already occurred or is occurring.

30 Terms of reference

- (1) In every financial year ending immediately before the day to which a performance audit relates, the Board must, at least 12 weeks before the day fixed for the holding of that year's annual general meeting, consult the Minister as to the terms of reference for the audit.
- (2) No more than 2 months after the consultation, the Minister must give the Board written notice of the Minister's views on the terms of reference for the audit.
- (3) Subject to subsection (4), the terms of reference for a performance audit must be determined by the Board.
- (4) The Board—
 - (a) must not determine terms of reference for a performance audit without obtaining the approval of an annual general meeting; and
 - (b) must not seek that approval before making known to the annual general meeting the views expressed by the Minister under subsection (2).
- (5) Notwithstanding subsection (3), where—
 - (a) the Board has failed to comply with subsection (1) or subsection (4)(b) in relation to a performance audit; or
 - (b) the Board has failed to gain the approval referred to in subsection (4)(a) to any proposed terms of reference for a performance audit,—the Minister must, after consultation with the Board, prescribe the terms of reference for the audit by written notice to the Board.
- (6) If the Minister has, by written notice to the Board, prescribed the terms of reference for a performance audit,—

- (a) as soon as is practicable after doing so, the Minister must publish in the *Gazette* a notice that the Minister has done so; and
- (b) the Board must make a copy of the written notice available free to any pig farmer who asks for one.

31 Appointment of person to conduct performance audit

- (1) Every performance audit must be conducted by a person (not being an officer or employee of the Board or a director or former director, or a former director of the former Board) appointed by the Board at least 1 month before the day to which it relates, after consultation with the Minister.
- (2) The Board must not appoint a person to conduct an audit without obtaining authority to select and appoint some person to do so at an annual general meeting.
- (3) Where 1 month before the day to which the audit relates the Board—
 - (a) has purported to appoint a person to conduct it without—
 - (i) consulting with the Minister under subsection (1); or
 - (ii) obtaining the authority required under subsection (2); or
 - (b) has failed or refused to appoint a person to conduct it,—the audit must be conducted by a person appointed by the Minister after consultation with the Board.

32 Conduct of performance audit

The person appointed to conduct a performance audit must, in determining how effectively and efficiently the Board is performing, take into account—

- (a) the object for which the Board has been established; and
- (b) any objectives established by the Board; and
- (c) the extent to which those objectives are in keeping with the achievement of its object and the effective carrying out of its functions under this Act; and
- (d) the nature of those objectives, the manner in which they were established, and any systems established by the Board for revising or reviewing them; and
- (e) the progress the Board is making towards the achievement of its object and of any objectives; and
- (f) the extent to which the Board has put in place and implemented policies and strategies to use its resources effectively and efficiently for the purpose of achieving its object and performing its functions and achieving any objectives; and
- (g) the nature of those policies and strategies, the manner in which they were put in place, and any systems for revising or reviewing them; and

- (h) the manner in which the Board is—
 - (i) performing its functions; and
 - (ii) exercising its powers; and
 - (iii) carrying on its activities; and
 - (iv) implementing its policies and strategies; and
- (i) where the Board has any operating companies, the contribution those companies are making towards the Board's progress in achieving its object, achieving its objectives (if any), and implementing its policies and strategies;—

but the fact that any other matter is determined under section 30(3) (or prescribed under section 30(5)) is conclusive evidence that it relates to the performance and efficiency of the Board.

33 Report on performance and efficiency of Board

- (1) Every person who conducts a performance audit must, after conducting it,—
 - (a) prepare—
 - (i) a written report on the conclusions reached and recommendations formulated as a result of conducting it; and
 - (ii) a written summary of those conclusions and recommendations; and
 - (b) give copies of the report and summary to the Minister and the Board.
- (2) If asked by a pig farmer to do so, the Board must without charge give the farmer a copy of the written summary prepared under subsection (1)(a)(ii) most recently given to it.

34 Board to pay for performance audits

For conducting a performance audit, the Board must pay the person who conducts it—

- (a) the remuneration agreed between the Board and the person, if the Board appointed the person;
- (b) the remuneration agreed between the Minister and the person (after the Minister has consulted the Board), if the Minister appointed the person.

Part 4

Pork Industry Board levy

35 Pork Industry Board levy

- (1) This subsection imposes a levy on all pigs slaughtered in licensed premises (other than licensed premises in the Chatham Islands).
- (2) All levy money paid to the Board forms part of its funds.

- (3) In any financial year, the Board may by notice in the *Gazette* fix the rate at which and basis on which the levy is to be calculated on pigs of any kind slaughtered in the next financial year.
- (4) The Board—
 - (a) may fix different rates and bases for the calculation of the levy on pigs of different kinds; and
 - (b) may fix a zero rate for the calculation of the levy on pigs of any kind.
- (5) In every financial year, the levy must be paid at the appropriate rate and on the appropriate basis fixed or deemed to have been fixed under this section.
- (6) If in any financial year no rate and basis have in fact been fixed under this section for the calculation of the levy on pigs of any kind slaughtered in the next financial year, there are deemed to have been fixed under this section for the calculation of the levy on pigs of that kind slaughtered in the next financial year the rate and basis last fixed for the calculation of the levy on pigs of that kind (whether as pigs of that kind or as pigs of a more broadly described kind of which that kind forms part)—
 - (a) under this section; or
 - (b) where no rate and basis have ever been fixed under this section for the calculation of the levy on pigs of that kind, under section 30(3) of the former Act.

36 Levy returns

- (1) The licensee of licensed premises (in the Chatham Islands or elsewhere) where pigs are slaughtered must make to the Director-General, in accordance with this section and any regulations made under this Act, returns of the pigs slaughtered there.
- (2) Every levy return—
 - (a) must be in a form determined by the Director-General after consulting the Board; and
 - (b) must be made to the Director-General within 10 days of the end of the period to which it relates; and
 - (c) in the case of a rural slaughterhouse, must be made in respect of the quarterly periods ending with the last days of March, June, September, and December; and
 - (d) in all other cases, must be made in respect of such periods as the Director-General for the time being specifies in that behalf by notice in the *Gazette*.
- (3) For the period before a notice under subsection (2)(d) takes effect, levy returns for licensed premises other than rural slaughterhouses must be made in respect of weekly periods.

37 Payment of levy

- (1) The Director-General must make to licensees of licensed premises a written demand of any amount of levy money payable under this Act.
- (2) The Board may, if a levy return is not made to the Director-General within the time specified in section 36 or if it is not satisfied that the information contained in a levy return is complete and correct,—
 - (a) estimate the levy money payable under this Act in respect of the period to which that levy return related or should have related; and
 - (b) make a written demand or authorise the Director-General to make a written demand for the levy money estimated under paragraph (a).
- (3) Every licensee to whom a demand is made under subsection (1) must, within 18 days or any longer period that the Board allows of the making of the demand, cause the amount demanded to be paid—
 - (a) into a bank account of the Ministry specified by the Director-General, for the benefit of the Director-General; or
 - (b) with the approval of the Director-General, into an office of the Ministry specified by the Director-General.
- (4) Every licensee to whom a demand is made under subsection (2) must cause the amount demanded to be paid—
 - (a) into a bank account of the Ministry specified by the Director-General, for the benefit of the Director-General; or
 - (b) with the approval of the Director-General, into an office of the Ministry specified by the Director-General.
- (5) An amount required by subsection (4) to be paid must be paid,—
 - (a) if the licensee has not earlier under section 38 disputed the validity of the estimate concerned, within 18 days or any longer period the Board allows of the making of the demand;
 - (b) if the estimate concerned has been confirmed or substituted under section 38(3)(c), within 18 days or any longer period the Board allows of the giving of the notice confirming it or substituting it for another.
- (6) All levy money received by the Director-General must be accounted for in full to the Board, subject to section 17(2) and (3) of the Ministries of Agriculture and Forestry (Restructuring) Act 1997.

Section 37(6): substituted, on 20 April 2010, by section 7(2) of the Ministry of Agriculture and Fisheries (Restructuring) Amendment Act 2010 (2010 No 19).

38 Licensee may dispute estimate

- (1) Within 10 days of the making of a demand under section 37(2) to the licensee of any licensed premises (other than a demand substituted for another under subsection (3)(c)(i) of this section), the licensee may dispute the estimated amount demanded, by written notice to the Board—

- (a) containing or accompanied by any written evidence or argument the licensee wishes to bring to the Board's attention; and
 - (b) accompanied by a copy of the demand.
- (2) If the demand was made by the Director-General, the licensee must give the Director-General a copy of the notice and the material accompanying it.
- (3) Within 15 days of receiving a notice of dispute, the Board must—
 - (a) consider the matters raised in it; and
 - (b) undertake any audit of the licensee's operations the Board thinks appropriate and the licensee allows; and
 - (c) by written notice to the licensee,—
 - (i) withdraw the demand, and substitute another for it; or
 - (ii) withdraw the demand, and indicate that no other will be substituted for it; or
 - (iii) confirm the demand; and
 - (d) give the Director-General a copy of the notice.

39 Licensees may recover levy money from owners of pigs at slaughter

A licensee of licensed premises who—

- (a) has paid any levy money payable in respect of any pig; but
- (b) was not the owner of the pig when it was slaughtered,—

may recover from the owner of the pig when it was slaughtered all or any part of the amount paid, as a debt, or by deducting it from any money in the licensee's hands belonging or payable to the owner.

40 Refunds

- (1) If the Board finds in any case that levy money has been overpaid or wrongfully paid, the Board must refund from its funds the amount overpaid or wrongfully paid.
- (2) The Board must not refund any amount to any person under this section unless—
 - (a) the person—
 - (i) has not been reimbursed for the amount; or
 - (ii) has been reimbursed for the amount but has since repaid it to the person from whom it was reimbursed; and
 - (b) the person provides to the Board such levy return or other information, verified in such manner as the Board may require, as in the Board's opinion enables the Board to determine the amount to be refunded.

41 Levy money to be held in trust accounts

- (1) Where any licensed premises are (regularly or from time to time) used for the slaughter of pigs, the licensee must keep for those premises a bank account (in this section referred to as a trust account) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and—
 - (a) ensure that it is so named as to identify those premises and that it is a trust account kept by the licensee for the purposes of this section; and
 - (b) take all practicable steps to ensure that—
 - (i) it is used only for holding amounts (being required by subsection (3) to be deposited in it) relating to those premises; and
 - (ii) the balance in it on any day is not less than the amount outstanding to the Director-General on that day in respect of the premises under subsection (2).
- (2) For the purposes of this section, the amount outstanding to the Director-General by the licensee of any licensed premises on any day in respect of those premises is the amount (if any) by which—
 - (a) the total of all amounts required by subsection (3) to be deposited in the trust account by the licensee (in respect of pigs slaughtered there, after the commencement of this section, while the licensee was licensee of the premises) no later than a day before that day; is greater than
 - (b) the total of all amounts of levy money already paid by the licensee to the Director-General (in respect of pigs slaughtered there, after the commencement of this section, while the licensee was licensee of the premises).
- (3) Where pigs have been slaughtered in licensed premises, the licensee must, no later than the day—
 - (a) specified in that behalf by; or
 - (b) ascertained or calculated by reference to,—

regulations made under this Act (or if no regulations then in force specify a day, or a means for ascertaining or calculating a day, the day 15 days after slaughter), deposit an amount equal to the levy on the pigs in the trust account maintained for the premises.
- (4) There is deemed to be held in trust for the Board (as levy money)—
 - (a) the amount outstanding to the Director-General by the licensee of any licensed premises held in the trust account maintained for the premises; or
 - (b) where the amount held in the account is less than the amount outstanding, all the money in the account.
- (5) Money deemed by subsection (4) to be held in trust—
 - (a) is not available for the payment of; and

- (b) is not liable to be attached or taken in execution at the instance of,—
any creditor of the licensee concerned (other than the Board).
- (6) A person who ceases to be the licensee of licensed premises must continue to maintain the trust account referred to in this section until all levy money payable to the Director-General in respect of the period during which the person was licensee of the premises has been paid.
- (7) Nothing in subsection (6) limits or affects any obligation or liability under this Act of any person who has become the licensee of any licensed premises.

42 Records relating to levy to be kept

- (1) Every person who makes a levy return under section 36 or pays levy money under section 37 must keep accurate records of the payment and full particulars of the transaction to which the payment related.
- (2) All such records must be preserved for a period of not less than 2 years from the date they are made.

43 Levy to constitute debt due to Board

- (1) When it has become payable, a levy is a debt due to the Board; and is recoverable as a debt by the Board in any court of competent jurisdiction.
- (2) The Board may assess, sue for, or recover levy money even if information has not been provided or a return has not been made.

44 Power of inspection in relation to levy

- (1) An authorised person may exercise the powers specified in subsection (2) at any reasonable time (within or outside business hours) for the purpose of—
 - (a) ascertaining whether the requirements of this Part are being met; or
 - (b) obtaining evidence that those requirements (or any of them) are not being met.
- (2) The powers referred to in subsection (1) are the power to—
 - (a) enter any place where—
 - (i) any document relating to levy money or the slaughter of pigs is held or is likely to be held; or
 - (ii) any pork product from pigs subject to the levy is held or is likely to be held;
 - (b) inspect any document or pork products referred to in paragraph (a);
 - (c) take or make copies of, or extracts from, any document inspected under this section; and for that purpose may—
 - (i) take possession of and remove any such document from the place where it is held, for any reasonable period;

- (ii) require a person to reproduce, or assist the authorised person to reproduce, in usable form any information recorded or stored on a document electronically or by other means.
- (2A) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 2, sections 118 and 119, and subpart 8) apply.
- (3) An authorised person must not under subsection (1) or subsection (2) enter any place that is not a place of business except with—
 - (a) the consent of an occupier; or
 - (b) a warrant under section 45.
- (4) In this section and section 45, **authorised person** means a person who is for the time being an employee or agent of the Board authorised by the Board to exercise the powers conferred by subsections (1) and (2).

Section 44(2A): inserted, on 1 October 2012, by section 292(2) of the Search and Surveillance Act 2012 (2012 No 24).

45 Warrant to inspect place other than place of business

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012), who on an application made in the manner provided in subpart 3 of Part 4 of that Act by an authorised person is satisfied that there are reasonable grounds to believe that—
 - (a) an offence against subsection (1) or subsection (2) of section 49 has been committed; and
 - (b) there is or is likely to be in some place that is not a place of business—
 - (i) any document relating to levy money or the slaughter of pigs; or
 - (ii) any pork product from pigs subject to the levy,—that is evidence of the commission of that offence,—may issue to every authorised person a warrant to enter and inspect the place.
- (2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012), who on an application made in the manner provided in subpart 3 of Part 4 of that Act by an authorised person is satisfied that, as a consequence of the inspection under section 44 of a place of business, there are reasonable grounds to believe that there is or is likely to be in some other place that is not a place of business—
 - (a) any document relating to levy money or the slaughter of pigs; or
 - (b) any pork product from pigs subject to the levy,—may issue to every authorised person a warrant to enter and inspect the other place.
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

Section 45(1): amended, on 26 March 2015, by section 4(1) of the Pork Industry Board Amendment Act 2015 (2015 No 31).

Section 45(1): amended, on 26 March 2015, by section 4(2) of the Pork Industry Board Amendment Act 2015 (2015 No 31).

Section 45(1): amended, on 1 October 2012, by section 292(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 45(2): amended, on 26 March 2015, by section 4(1) of the Pork Industry Board Amendment Act 2015 (2015 No 31).

Section 45(2): amended, on 26 March 2015, by section 4(2) of the Pork Industry Board Amendment Act 2015 (2015 No 31).

Section 45(2): amended, on 1 October 2012, by section 292(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 45(3): replaced, on 1 October 2012, by section 292(5) of the Search and Surveillance Act 2012 (2012 No 24).

46 Duties of persons executing warrants

[Repealed]

Section 46: repealed, on 1 October 2012, by section 292(6) of the Search and Surveillance Act 2012 (2012 No 24).

47 Other duties of persons carrying out inspections

[Repealed]

Section 47: repealed, on 1 October 2012, by section 292(6) of the Search and Surveillance Act 2012 (2012 No 24).

Part 5 Miscellaneous provisions

48 Requirement for certain persons to provide certain information to Board

- (1) The licensee of licensed premises where pigs are slaughtered and processed must provide to the Board (within a reasonable time specified in the notice requesting it) all information that the Board, by notice in writing, requests from the licensee in respect of any or all of the following matters:
 - (a) the numbers of pigs slaughtered:
 - (b) the quantities of pork product and co-product processed, produced, held, or stored:
 - (c) the quantities of pork product and co-product produced and intended to be sold for consumption or use in New Zealand.
- (2) An exporter of pork product or co-product must provide to the Board (within a reasonable time specified in the notice requesting it) all information that the Board, by notice in writing, requests from the exporter in respect of any or all of the following matters:
 - (a) the quantities of pork product and co-product exported:
 - (b) the estimated value of the pork product and co-product exported:

- (c) the port of discharge, and destination, of the pork product and co-product exported.
- (3) A single notice may request information to be supplied regularly, at specified intervals or in respect of specified periods.
- (4) A notice may request information—
 - (a) in relation to pigs, pork products, or co-products generally; or
 - (b) in relation to pigs, pork products, or co-products of kinds specified in the request.
- (5) Instead of requesting any information under subsection (2), the Board may request it from the person holding office under the State Sector Act 1988 as the chief executive of the department of State referred to in section 268 of the Customs and Excise Act 2018; and in that case (notwithstanding any enactment to the contrary) the chief executive may cause to be supplied to the Board such of that information as is available to the chief executive.
- (6) The Board—
 - (a) must not publish or disclose to any person any information obtained under this section that enables the identity of the person to whom it relates to be identified, except—
 - (i) for the purposes of the performance or exercise of any of the Board's functions or powers under this Act; or
 - (ii) for the purposes of an action brought under or in relation to this Act; or
 - (iii) while giving evidence in any legal proceeding taken under or in relation to this Act; or
 - (iv) with the consent of every identifiable person to whom it relates; and
 - (b) must not use any information obtained under this section in any way for gain or reward.
- (7) A person to whom any information obtained under this section is published or disclosed (whether or not in accordance with subsection (6) or this subsection)—
 - (a) must not publish or disclose to any person any information obtained under this section that enables the identity of the person to whom it relates to be identified, except—
 - (i) for the purposes of the performance or exercise of any of the Board's functions or powers under this Act; or
 - (ii) for the purposes of an action brought under or in relation to this Act; or
 - (iii) while giving evidence in any legal proceeding taken under or in relation to this Act; or

- (iv) with the consent of every identifiable person to whom it relates;
and
- (b) must not use any information obtained under this section in any way for gain or reward.

Section 48(5): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

49 Offences and penalties

- (1) Every person who knowingly fails to comply with section 41(1)(b)(ii) commits an offence, and is liable on conviction—
 - (a) to a fine not exceeding \$150,000, if the shortfall in the account exceeds \$500,000;
 - (b) to a fine not exceeding \$80,000, if the shortfall in the account exceeds \$100,000 but does not exceed \$500,000;
 - (c) to a fine not exceeding \$30,000, if the shortfall in the account does not exceed \$100,000.
- (2) Every licensee of licensed premises commits an offence, and is liable on conviction to a fine not exceeding \$20,000, who—
 - (a) knowingly makes a false or misleading levy return; or
 - (b) fails or refuses to comply with section 36, section 37(3), or section 42; or
 - (c) fails or refuses to pay, within the time required by subsection (5) of section 37, an amount that person is required by subsection (4) of that section to pay; or
 - (d) wilfully prevents, obstructs, or hinders, a person exercising or attempting to exercise any of the powers conferred by subsections (1) and (2) of section 44; or
 - (e) fails or refuses to make available to a person exercising any of the powers conferred by subsections (1) and (2) of section 44 any document relating to levy money or the slaughter of pigs, or any pork product from pigs subject to the levy.
- (3) Every person who—
 - (a) fails or refuses to comply with subsection (1) or subsection (2) of section 48; or
 - (b) in response to a request under subsection (1) or subsection (2) of section 48, wilfully gives the Board false or misleading information,—commits an offence, and is liable on conviction to a fine not exceeding \$15,000.

Section 49(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 49(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 49(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

50 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
 - (a) providing for and regulating the assessment, collection, estimation, payment, and receipt, of levy money and of any additional levy or charge for late payment of levy money:
 - (b) empowering the Board in any particular case to waive all or any part of any additional levy or charge for late payment that might otherwise be payable:
 - (c) providing for and regulating the rates of any additional levy or charge for late payment of levy money:
 - (d) preventing the evasion of the payment of levy money and any additional levy or charge in respect of its late payment:
 - (e) providing for the making of levy returns to, or the obtaining of any information or particulars by, the Board for the purposes of this Act, in relation to the levy:
 - (f) prescribing offences against the regulations; and prescribing penalties for such offences not exceeding \$5,000:
 - (g) prescribing the manner and circumstances in which meetings held under section 17 may or must be called:
 - (h) prescribing procedures (not inconsistent with this Act) for meetings held under section 17, including—
 - (i) who (if anybody) may attend in addition to the pig farmers entitled to attend by virtue of section 17(4); and
 - (ii) who is eligible to vote; and
 - (iii) who may cast a vote as representative of an eligible body corporate, trust, partnership, or body of persons; and
 - (iv) who (if anybody) may cast a vote as a proxy for an eligible pig farmer, and the circumstances (if any) in which a proxy vote may be cast; and
 - (v) any weighting to be given to votes cast (or any means by which such a weighting may be calculated or ascertained):
 - (i) prescribing procedures (not inconsistent with this Act) for elections of directors, including—

- (i) who is eligible to vote; and
 - (ii) who may cast a vote as representative of an eligible body corporate, trust, partnership, or body of persons; and
 - (iii) any weighting to be given to votes cast (or any means by which such a weighting may be calculated or ascertained):
- (j) providing for the disclosure or publication of corporate intent and accountability arrangements of companies wholly or partly owned by the Board:
- (k) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Where regulations made under this Act provide for the payment of an additional charge or levy, every reference to the levy in this Act is deemed to include a reference to the additional charge or levy.

51 Notices

- (1) The Board may give any person a notice under this Act by causing it to be—
 - (a) delivered to the person; or
 - (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
 - (e) posted in a letter addressed to the person at the person's home or business.
- (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 Board.
- (3) If any such notice is posted to any person by registered letter, it is deemed to have been given to the person when it would have been delivered in the ordinary course of post; and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.

52 Transitional provisions relating to members of former Board

- (1) After the commencement of this Part, this Act applies to every person who immediately before that commencement was an elected member of the former Board as if the person were a director elected under section 13(2)(a); and, subject to this Act, every such person continues in office as a director,—

- (a) in the case of a person who—
 - (i) was elected to be a member in the 1995 triennial elections; or
 - (ii) was elected under the former Act to fill a vacancy caused by the death, resignation, or removal from office of a member elected in the 1995 triennial elections or a successor to such a member,—until the close of 31 July 1998:
 - (b) in the case of a person who—
 - (i) was elected to be a member in the 1996 triennial elections; or
 - (ii) was elected under the former Act to fill a vacancy caused by the death, resignation, or removal from office of a member elected in the 1996 triennial elections or a successor to such a member,—until the close of 31 July 1999:
 - (c) in the case of a person who—
 - (i) was elected to be a member in the 1997 triennial elections; or
 - (ii) was elected under the former Act to fill a vacancy caused by the death, resignation, or removal from office of a member elected in the 1997 triennial elections or a successor to such a member,—until the close of 31 July 2000.
- (2) Notwithstanding anything in this Act, every person who immediately before the commencement of this Part was a member of the former Board appointed under any of paragraphs (b) to (d) of section 4(2) of the former Act is deemed to have become a director appointed under section 13(2)(b) on that commencement; and continues in office until the earliest of the following days:
- (a) the day on which that person dies, resigns, or is removed from office:
 - (b) the day 6 months after that commencement:
 - (c) the day on which the first appointment of any director under section 13(2)(b) takes effect.

53 Transitional provisions relating to officers and employees of Board

- (1) Every person who immediately before the commencement of this section was an officer or employee of the former Board is deemed to become an officer or employee of the Board on that commencement.
- (2) For the purposes of any fund or scheme for the purpose of providing superannuation or retiring allowances, the service of any person, to whom subsection (1) applies, as an officer or employee of the former Board must be treated as service as an officer or employee of the Board.

54 Repeals

The enactments specified in Schedule 4 are repealed.

Schedule 1

Provisions applying to directors of Board

s 15

- 1 Duty of directors to act in good faith and to best attain object of Board**

A director, when exercising powers or performing duties, must act in good faith and as the director believes will best attain the object of the Board.
- 2 Exercise of powers in relation to employees**
 - (1) Nothing in clause 1 limits the power of a director to make provision for the benefit of employees of the Board in connection with the Board's ceasing to carry on the whole or part of its affairs.
 - (2) In subclause (1),—

Board includes a subsidiary of the Board; and

employees includes former employees and the dependants of employees or former employees; but does not include an employee or former employee who is or was a director.
- 3 Powers to be exercised for proper purpose**

A director must exercise a power for a proper purpose.
- 4 Directors to comply with Act**

A director must not act, or agree to the Board's acting, in a manner that contravenes this Act.
- 5 Reckless trading**

A director must not—

 - (a) agree to the affairs of the Board being carried on in a manner likely to create a substantial risk of serious loss to the Board's creditors; or
 - (b) cause or allow the affairs of the Board to be carried on in a manner likely to create a substantial risk of serious loss to the Board's creditors.
- 6 Duty in relation to obligations**

A director must not agree to the Board's incurring an obligation unless the director believes at that time on reasonable grounds that the Board will be able to perform the obligation when it is required to do so.
- 7 Director's duty of care**

A director, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,—

 - (a) the nature of the Board; and

- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by him or her.

8 Use of information and advice

- (1) A director, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
 - (a) an employee of the Board whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) any other director or committee of persons established by the Board (upon which the director did not serve) in relation to matters within the director's or committee's designated authority.
- (2) Subclause (1) applies to a director only if the director—
 - (a) acts in good faith; and
 - (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) has no knowledge that such reliance is unwarranted.

9 Meaning of interested

- (1) For the purposes of this schedule, a director is interested in a transaction to which the Board is a party if, and only if, the director—
 - (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
 - (b) has a material financial interest in another party to the transaction; or
 - (c) is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is a wholly-owned subsidiary of the Board; or
 - (d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or person who will or may derive a material financial benefit from, the transaction; or
 - (e) is otherwise directly or indirectly materially interested in the transaction.
- (2) For the purposes of this schedule a director is not interested in a transaction to which the Board is a party if the transaction comprises only the giving by the Board of security to a third party which has no connection with the director, at

the request of the third party, in respect of a debt or obligation of the Board for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.

Schedule 1 clause 9(1)(d): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

10 Disclosure of interest

- (1) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Board, cause to be entered in the interests register and disclose to the board of directors,—
 - (a) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (b) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- (2) For the purposes of subclause (1), a general notice given to the board of directors to the effect that a director is a shareholder, director, officer or trustee of a person named in the notice and is to be regarded as interested in any transaction that may, after the day on which the notice is given to the board of directors, be entered into by the Board with that person, is a sufficient disclosure of interest in relation to that transaction.
- (3) A failure by a director to comply with subclause (1) does not affect the validity of a transaction entered into by the Board or the director.
- (4) Every director who fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Schedule 1 clause 10(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

11 Avoidance of transactions

- (1) A transaction entered into by the Board in which a director is interested may be avoided by the Board at any time before the expiration of 3 months after the transaction is disclosed to the board of directors or entered in the interests register.
- (2) A transaction cannot be avoided if the Board receives fair value under it.
- (3) For the purposes of subclause (2), the question whether the Board receives fair value under a transaction is to be determined on the basis of the information known to the Board and to the interested director at the time the transaction is entered into.
- (4) If a transaction is entered into by the Board in the ordinary course of its business and on usual terms and conditions, the Board is presumed to receive fair value under the transaction.
- (5) For the purposes of this clause,—

- (a) a person seeking to uphold a transaction who knew or ought to have known of the director's interest at the time the transaction was entered into has the onus of establishing fair value; and
 - (b) in any other case, the Board has the onus of establishing that it did not receive fair value.
- (6) A transaction in which a director is interested can be avoided only on the ground of the director's interest in accordance with this clause.

12 Effect on third parties

The avoidance of a transaction under clause 11 does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—

- (a) from a person other than the Board; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the person referred to in paragraph (a) acquired the property from the Board.

13 Application of clauses 10 and 11 in certain cases

Nothing in clauses 10 and 11 applies in relation to—

- (a) the fixing of any levy by the Board; or
- (b) remuneration or any other benefit given to a director in his or her capacity as a director; or
- (c) an indemnity given to or insurance provided for a director in his or her capacity as a director.

14 Interested director may vote

Subject to any rules adopted by the Board for the purposes of this clause, a director who is interested in a transaction entered into, or to be entered into, by the Board, may—

- (a) vote on a matter relating to the transaction; and
- (b) attend a meeting of the board of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
- (c) sign a document relating to the transaction on behalf of the Board; and
- (d) do any other thing in his or her capacity as a director in relation to the transaction,—

as if the director were not interested in the transaction.

15 Use of Board information

- (1) A director who has information in his or her capacity as a director or employee of the Board, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except—
 - (a) for the purposes of the Board; or
 - (b) as required by law; or
 - (c) in accordance with subclause (2); or
 - (d) in complying with clause 10.
- (2) A director may disclose, make use of, or act on the information if—
 - (a) particulars of the disclosure, use, or act in question are entered in the interests register; and
 - (b) the director is first authorised to do so by the board of directors; and
 - (c) the disclosure, use, or act in question will not, or will not be likely to, prejudice the Board.

16 Duties owed to Board

The duties of the directors of the Board set out in this schedule are owed to the Board.

Schedule 2

Provisions applying to Board and board of directors

s 16

Directors

1 Term of office of directors

- (1) Except as provided in this Act,—
 - (a) an elected director holds office for a term of 3 years; and
 - (b) an appointed director holds office for a term, not exceeding 3 years, determined by the Minister after considering—
 - (i) the Board's recommendation on the matter; and
 - (ii) the matters specified in section 13(6).
- (2) Notwithstanding the term of a director's appointment or election, but subject to subclause (3), the term of office of every director expires with the close of 31 July in the year in which the term of office for which the director was appointed or elected expires.
- (3) A director may continue in office after the expiry of the term for which the director was elected or appointed if the Minister—
 - (a) authorises the director to continue in office; and
 - (b) determines the length of the director's extended term,—before that expiry (or before the expiry of any extension or extensions of that term authorised under this subclause).
- (4) If a director continues in office for any period after the expiry of the director's term, the successor's term of office must be reduced by that period.
- (5) Any director may from time to time be re-elected or reappointed.

2 Extraordinary vacancies

- (1) The Minister may remove a director from office for disability affecting performance of duty, bankruptcy, breach of any duty set out in Schedule 1 that applies to the director, or misconduct, proved to the Minister's satisfaction.
- (2) A director may resign by written notice to the Minister.
- (3) If a director dies, or resigns, or is removed from office and the residue of the term of the vacating director—
 - (a) does not exceed 12 months, the Minister may, on the recommendation of the board of directors, appoint a director for the residue of the term for which the vacating director was elected or appointed; or
 - (b) exceeds 12 months, the vacancy must be filled,—

- (i) where the vacating director was an elected director, by electing a director in the manner specified in section 13(2)(a); or
 - (ii) where the vacating director was an appointed director, by appointing a director in the manner specified in section 13(2)(b).
- (4) The powers of the Board or the board of directors are not affected by any vacancy in the board of directors.

3 Deputies of directors

- (1) If satisfied that a director is, because of illness, absence, or other sufficient cause, incapable of performing the duties of a director, the Minister may, on the recommendation of the board of directors, appoint a deputy to act for the director during the director's incapacity.
- (2) A deputy appointed under this clause is deemed for all purposes to be a director.
- (3) No appointment of a deputy, no acts done by the deputy, and no acts done by the board of directors while any deputy is acting, may in any proceedings be questioned on the ground that the occasion for appointment had not arisen or had ceased.

4 Powers of board of directors

The board of directors has all the powers necessary—

- (a) for managing, and for directing and supervising the management of, the affairs of the Board; and
- (b) for exercising the powers of the Board.

Meetings of Board

5 Meetings of Board

- (1) Meetings of the board of directors must be held at times and places it appoints.
- (2) The Chairperson of the board of directors or any 3 directors may at any time call a special meeting of the board of directors.
- (3) At all meetings of the board of directors, the quorum necessary for the transaction of business is 4 directors.
- (4) All questions arising at any meeting of the board of directors must be decided by a majority of the votes cast by the directors present at the meeting.
- (5) A resolution assented to by letter, telegram, telex, facsimile message, or electronic message by all directors is as valid and effectual as if it had been passed at a meeting of the board of directors duly called and constituted.
- (6) Where—
 - (a) there is held a telephone or video conference of at least 4 directors of the Board; and

- (b) all reasonable efforts have been made to enable every director to participate in the conference; and
- (c) a resolution is assented to by a majority of the directors participating in the conference,—

the resolution is as valid and effectual as if it had been passed at a meeting of the board of directors duly called and constituted.

- (7) Except as provided in this Act and any regulations made under it, the board of directors may regulate its procedure at meetings in any manner it thinks fit.

Schedule 2 clause 5(3): amended, on 31 July 2002, by section 4 of the Pork Industry Board Amendment Act 2001 (2001 No 76).

Schedule 2 clause 5(6)(a): amended, on 31 July 2002, by section 4 of the Pork Industry Board Amendment Act 2001 (2001 No 76).

6 Chairperson and Deputy Chairperson

- (1) At its first meeting after 31 July in each year, the board of directors must elect a Chairperson and a Deputy Chairperson from among the directors.
- (2) If a Chairperson or a Deputy Chairperson vacates office as Chairperson or Deputy Chairperson or ceases to be a director, the board of directors must elect from among its members a Chairperson or a Deputy Chairperson, who holds office until the next election of a Chairperson and Deputy Chairperson.
- (3) If present, the Chairperson must preside at all meetings of the board of directors.
- (4) If the Chairperson is absent from any meeting of the board of directors and the Deputy Chairperson is present, the Deputy Chairperson must preside.
- (5) If both the Chairperson and Deputy Chairperson are absent from any meeting of the board of directors, the directors present must appoint one of their number to preside at the meeting.
- (6) At any meeting of the board of directors, the person presiding has a deliberative vote and, in the case of an equality of votes, also has a casting vote.
- (7) A Chairperson or Deputy Chairperson may from time to time be re-elected.

Miscellaneous provisions

7 Contracts of Board

- (1) Subject to clause 8, a contract or other enforceable obligation may be entered into by the Board as follows:
 - (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Board in writing signed under the name of the Board by—
 - (i) 2 or more directors; or
 - (ii) 1 or more persons authorised by the Board under clause 8:

- (b) an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Board in writing by a person acting under the Board's express or implied authority:
 - (c) an obligation which, if entered into by a natural person is not, by law, required to be in writing, may be entered into on behalf of the Board in writing or orally by a person acting under the Board's express or implied authority.
- (2) Nothing in subclause (1) limits or prevents the Board entering into a contract or other enforceable obligation in writing under its seal, if it has one.
- (3) Subclause (1) applies to a contract or other obligation—
 - (a) whether or not that contract or obligation was entered into in New Zealand; and
 - (b) whether or not the law governing the contract or obligation is the law of New Zealand.
- (4) Notwithstanding anything in subclauses (1) to (3), no contract made by or on behalf of the Board is invalid by reason only that it was not made in the manner provided by this clause, if it was made under or to give effect to a resolution of the Board.

8 Delegation of functions and powers of Board

- (1) The Board may, either generally or in relation to a particular matter, delegate to a director or officer or employee of the Board any of the functions and powers of the Board under this Act, including the power to execute deeds, but not including this power of delegation.
- (2) A delegation under subclause (1), may be made to—
 - (a) a specified person; or
 - (b) persons of a specified class; or
 - (c) the holder for the time being of a specified office; or
 - (d) the holders for the time being of offices of a specified class.
- (3) With the Board's prior written approval, the chief executive of the Board may delegate to any officer or employee of the Board any function or power of the Board delegated to the chief executive by the Board.
- (4) Subject to any general or special directions or conditions given or imposed by the Board or the chief executive, as the case may be, the person to whom any function or power is delegated may perform or exercise it in the same manner and with the same effect as if it had been conferred on that person directly by this Act and not by delegation.

- (5) Every person purporting to act pursuant to a delegation under this clause is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (6) A delegation under this clause may be revoked at any time.
- (7) The delegation of a power or function under this clause does not—
 - (a) prevent the Board or the chief executive, as the case may be, exercising the same power or function; or
 - (b) affect the responsibility of the Board for the actions of the person acting under the delegation.

9 Expenditure not otherwise authorised

The Board may, in any financial year, expend out of the funds of the Board for purposes not otherwise authorised by this Act or any other enactment any sum or sums not exceeding \$5,000 in total.

Schedule 3
Forms of warrant to search place other than place of business
[Repealed]

s 45

Schedule 3: repealed, on 1 October 2012, by section 292(6) of the Search and Surveillance Act 2012 (2012 No 24).

Schedule 4
Enactments repealed

s 54

Department of Justice (Restructuring) Act 1995 (1995 No 39)

Amendment(s) incorporated in the Act(s).

Meat Amendment Act 1985 (1985 No 142)

Amendment(s) incorporated in the Act(s).

Official Information Amendment Act 1987 (1987 No 8)

Amendment(s) incorporated in the Act(s).

Pork Industry Board Act 1982 (1982 No 138)

Pork Industry Board Amendment Act 1987 (1987 No 45)

Pork Industry Board Amendment Act 1988 (1988 No 221)

Poultry Board Act Repeal Act 1989 (1989 No 4)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

Trustee Amendment Act 1988 (1988 No 119)

Amendment(s) incorporated in the Act(s).

Reprints notes

1 *General*

This is a reprint of the Pork Industry Board Act 1997 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Pork Industry Board Amendment Act 2015 (2015 No 31)

Companies Amendment Act 2013 (2013 No 111): section 14

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Search and Surveillance Act 2012 (2012 No 24): section 292

Criminal Procedure Act 2011 (2011 No 81): section 413

Ministry of Agriculture and Fisheries (Restructuring) Amendment Act 2010 (2010 No 19): section 7

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Pork Industry Board Amendment Act 2001 (2001 No 76)

Public Audit Act 2001 (2001 No 10): section 52

Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94): section 8(1)