

Meat Board Act 2004 058
Commenced: 1 JULY 2004

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Meat Board Act 2004.

Part 1
Preliminary provisions

2 Commencement

This Act comes into force on 1 July 2004.

3 Purpose

The purpose of this Act is---

(a) to provide for the New Zealand Meat Board to establish and operate meat export quota management systems and to provide for compliance audits in relation to such systems; and

(b) to make provision for the ownership and use of the Board's assets;
and

(c) to make provision for certain tax consequences in relation to the transfer of funds and other assets between the Board and an industry-good organisation; and

(d) to provide for transitional arrangements relating to the transfer of the Board's industry-good functions to the industry-good organisation.

4 Interpretation

(1) In this Act, unless the context otherwise requires,---

allocation mechanism means a mechanism established under section 23

annual general meeting means a meeting held under section 58(1)

authorised person means a person appointed or authorised by the Board under section 60 to exercise the powers conferred by section 61

Board means the New Zealand Meat Board established by section 4(1) of the Meat Board Act 1997 and continued in existence by section 6 of this Act

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

director means a director of the Board

document means a 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

financial year means a period of 12 months ending with 30 September

former Board means the New Zealand Meat Board, established by section 4(1) of the Meat Board Act 1997, as it existed before the commencement of this Act

industry-good organisation---

(a) means Meat and Wool New Zealand Limited; and

(b) includes any organisation certified by the Minister under subsection (3) as a successor organisation to that company

industry-selected director means a director---

(a) nominated by the industry-good organisation under section 13(2)(a), (b), or (c); or

(b) nominated by the industry-good organisation under clause 2(4)(a) of Schedule 2; or

(c) elected by livestock farmers or meat processors or exporters under regulations made under this Act; or

(d) nominated or appointed under regulations made under this Act by a person other than the Minister

kind includes description

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 livestock are slaughtered under a risk management programme registered under Part 2 of that Act 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

livestock---

(a) means animals that are cattle, goats, or sheep; and

(b) includes animals of any other kind that are for the time being declared by the Governor-General by Order in Council to be livestock for the purposes of this Act

livestock farmer means person engaged in New Zealand in the business of farming livestock for the purpose of producing meat (whether in conjunction with any other business or not)

market includes any 2 or more markets, any country, and any group of countries

meat means the whole or any part of the dressed carcass of any slaughtered livestock

Meat and Wool New Zealand Limited means the company that, as at the commencement of this Act, was registered under the Companies Act 1993 as Meat and Wool New Zealand Limited, and includes that company by whatever name it is subsequently known

meat industry includes livestock farmers and persons engaged in the business of meat processing or exporting in New Zealand

meat product means anything that is---

(a) meat; or

(b) edible offal taken from slaughtered livestock; or

(c) an article or substance intended for human consumption (other than a vell or rennet) that is derived wholly or substantially from slaughtered livestock

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

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

quota certificate means a written document conferring eligibility for entry into a quota market on---

(a) a particular consignment of meat product; or

(b) a particular quantity of meat product exported or to be exported by a specified person

quota compliance audit means a quota compliance audit carried out, or required to be carried out, under section 38

quota management system means a system that is established by the Board for the allocation of access to a quota market for New Zealand exporters and that provides for compliance with New Zealand's international treaty obligations in relation to that quota market access

quota market has the meaning given in subsection (2)

registered exporter means an exporter registered under Part 3

reserves means all the net assets of the Board other than---

(a) fees collected under section 55 to meet the costs of exporter registration; and

(b) fees collected under section 36 to meet the costs of quota management, except to the extent that they are collected to fund past payments made by the Board that---

(i) were made in relation to quota management; and

(ii) were not themselves funded from quota fees set under section 36.

(2) A quota market exists when authorities responsible for that market have granted or undertaken to grant access to that market at zero or concessional tariff rates for a particular quantity of meat products of any kind imported from New Zealand during any period. The quota market is the market for that quantity of those meat products, and for no other quantity of meat products.

(3) For the purposes of the definition of industry-good organisation, the Minister may certify an organisation to be a successor organisation to the company described in that definition if he or she is satisfied that---

(a) that company has ceased to carry out substantially the functions relating to the meat industry for which it was set up; and

(b) the organisation is carrying out substantially the same functions relating to the meat industry as those for which the company was set up.

Compare: 1997 No 105 s 2

5 Act binds the Crown
This Act binds the Crown.
Compare: 1997 No 105 s 3

Part 2 New Zealand Meat Board

6 New Zealand Meat Board

(1) The New Zealand Meat Board established under section 4(1) of the Meat Board Act 1997 is continued in existence.

(2) The Board is a body corporate with perpetual succession, and is the same legal entity as the former Board.

(3) The Board's assets belong ultimately to livestock farmers, but may for the time being be held and administered in accordance with the Board's objects.
Compare: 1997 No 105 s 4

7 Objects of Board

The objects of the Board are---

(a) to facilitate the capture, for New Zealand and in the interests of the meat industry, of the best possible ongoing returns available from quota markets:

(b) to manage the Board's reserves and other assets in the interests of livestock farmers.

Compare: 1997 No 105 s 5

8 Functions of Board

(1) The functions of the Board are:

(a) to establish and operate quota management systems:

(b) to collect, process, and maintain information as required to support the Board's function under paragraph (a):

(c) to manage, in the interests of livestock farmers, the Board's reserves and other assets, including---

(i) providing funding to assist in the meat industry's response to any major industry crisis; and

(ii) maintaining a prudent level of net assets to avoid jeopardising quota markets and the integrity of quota management systems; and

(iii) providing funding for industry-good activities:

(d) to account to livestock farmers regarding the Board's activities:

(e) to perform such other functions as are conferred on the Board by

this Act or any other enactment.

(2) Without limiting the Board's ability to contract for services, the Board may not delegate any of its functions other than to a director, officer, or employee of the Board in accordance with clause 8 of Schedule 2.

(3) The Board may perform any of the Board's functions to the extent only that its performance is consistent with the Board's objects.

(4) It is also a function of the Board to report regularly to the Minister on---

(a) its achievement of its objects; and

(b) its performance of its functions; and

(c) any other matters the Board thinks fit or the Minister requests.

Compare: 1997 No 105 s 6

9 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 this Act, or by any other enactment or 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 objects; 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).

(4) Neither the Board nor any of its subsidiaries may---

(a) trade in meat products; or

(b) hold any interest in any person that trades in meat products (other than an interest held in common with other members of the public in a fund or entity whose primary function is fund management over a wide range of investments).

Compare: 1997 No 105 s 11

10 Power to distribute assets to livestock farmers

The Board may distribute any of its assets to livestock farmers (whether directly, indirectly through the industry-good organisation or the shareholding trust referred to in section 85(3), or otherwise) if---

(a) the distribution would not prejudice its obligations under section 12; and

(b) the Board has previously consulted livestock farmers on the amount, terms, and nature of the distribution.

11 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 relating to production, processing, or trade in meat products; 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.

Compare: 1997 No 105 s 12

12 Financial obligations and reserves policy

(1) The Board must maintain a prudent level of net assets to avoid jeopardising quota markets and the integrity of quota management systems.

(2) The Board must---

(a) at all times have a policy on the use of its reserves; and

(b) consult livestock farmers before setting or changing such a policy;
and

(c) make the policy available to livestock farmers on request; and

(d) comply with its reserves policy.

(3) The Board may not allocate funds from its reserves to the industry-good organisation or any other person to undertake specific industry-good projects unless it has first consulted livestock farmers.

(4) Subsection (3) does not prevent the Board from allocating, without prior consultation, funds from its reserves for the purpose of assisting the meat industry in responding to any major industry crisis.

(5) Subsection (2)(b) does not require the Board to consult livestock farmers on its reserves policy at any time before the first annual general meeting of the Board following the commencement of this Act, but it must consult them on that policy at that meeting.

13 Governance of Board

(1) The affairs of the Board are to be governed by, or under the supervision or direction of, the board of directors.

(2) Subject to subsections (4) to (6), the board of directors comprises---

(a) 6 directors nominated by the industry-good organisation who are elected by livestock farmers as directors of the organisation; and

(b) 2 directors nominated by the industry-good organisation who---

(i) are directors of the organisation; and

(ii) became directors of the organisation on the recommendation of another entity that represents meat processors and exporters; and

(c) at the option of the industry-good organisation, 1 other director of the organisation nominated by the organisation; and

(d) 2 directors appointed by the Minister, after consultation with the Board (or the former Board, in the case of the first appointments after the commencement of this Act) and taking into account the need for the Board to have expertise in relation to the international meat trade, quota management, and international trade relations.

(3) The industry-good organisation must notify the Minister in writing of its nomination of directors under subsection (2)(a) to (c), and those directors are deemed to have been appointed as directors on the date of the notification.

(4) If the industry-good organisation ceases to exist, or if the Minister is satisfied, and certifies accordingly, that---

(a) the organisation is no longer owned by a trust the beneficiaries of which consist of all livestock farmers (except any reasonably excluded for reasons of administrative cost); or

(b) the majority of the organisation's directors are no longer elected by livestock farmers broadly in proportion to their share of the livestock farming industry; or

(c) the industry-good organisation has been unable to collect levies, neither in relation to sheepmeat nor to beef, under the Commodity Levies Act 1990 for the entire immediately preceding year,---
then new directors of the Board must be appointed or elected in accordance with regulations made under this Act.

(5) The regulations must provide for a majority of the directors of the Board to be elected by livestock farmers. They may also specify---

(a) the procedures the Minister must follow before and consequent upon being satisfied of the matters specified in subsection (4)(a), (b), or (c):

(b) the number and type of directors to be elected or appointed to the Board:

(c) the method of their election or appointment:

(d) the term for which they hold office:

(e) any appropriate transitional or other related matters or timeframes, including provision for the transfer from the industry-good organisation to the Board of---

(i) rolls of livestock farmers compiled or held for the purposes of elections of directors or a referendum of livestock farmers; and

(ii) any data compiled as a result of an election or referendum held using those rolls.

(6) Where subsection (4) requires new directors to be appointed or elected,---

(a) the appointments or elections must be made or conducted as soon as practicable; and

(b) the directors nominated by the industry-good organisation continue in office until replaced by---

(i) the new directors appointed or elected in accordance with regulations made for the purposes of this section; or

(ii) interim directors appointed by the Minister under paragraph (c); and

(c) the Minister may if he or she thinks fit, after consultation with such organisations representing livestock farmers and organisations representing meat processors and exporters as the Minister considers appropriate, appoint interim directors to replace the existing directors nominated by the industry-good organisation, such directors to hold office until replaced by new directors appointed or elected in accordance with regulations made for the purposes of this section; and

(d) the existing directors appointed by the Minister under subsection (2)(d) continue in office until the new directors are appointed or elected.
Compare: 1997 No 105 ss 13, 14

14 Application of Part II of Commerce Act 1986

(1) Nothing in Part II 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 sections 23 to 37 of this Act; or

(b) by any person in compliance with any of those provisions.

(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.

Annual report and statements

17 Board to prepare financial statements

(1) As soon as 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 include explicit information on expenditure of reserves.

(3) The Financial Reporting Act 1993 applies to the Board and all the financial statements referred to in subsection (1) as if---

(a) the Board's subsidiaries were companies within the meaning of that Act; and

(b) the Board and the Board's subsidiaries were a group within the meaning of that Act; and

(c) the Board were both a company and an issuer within the meaning of

that Act (and a company within the meaning of the Companies Act 1993).
Compare: 1997 No 105 s 50

18 Audit of financial statements

(1) Subject to subsection (2),---

(a) the statements referred to in section 17 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 livestock 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 17 relate, there is no person appointed auditor under subsection (1), the statements must be audited by an auditor appointed by the Minister.

(3) For the purposes of the audit of any statement referred to in section 17, 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.

Compare: 1997 No 105 s 51

19 Remuneration of auditor

The Board must pay the person who audits its financial statements---

(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.

Compare: 1997 No 105 s 52

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

(1) As soon as is practicable after the statements referred to in section 17 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 clause 11(4) of Schedule 2; 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 industry-selected directors for that year; and

(e) where a resolution under section 59(2) 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 livestock farmers who ask for them, and for that purpose must ensure that there are available at every annual general meeting copies for livestock farmers attending.

(4) The Board must also make those reports and statements available on its website or by other electronic means.

Compare: 1997 No 105 s 53

Part 3

Quota markets and registration of exporters

21 Purpose of this Part

The purpose of this Part is---

(a) to provide for compliance with New Zealand's international treaty obligations relating to quota markets by or through the Board on behalf of the Crown; and

(b) to provide for the administration of the allocation of access to such quota markets; and

(c) to ensure that the meat industry is the recipient of the economic benefits deriving from quota markets.

22 Crown owns right to secure economic benefits from quota markets
The Crown owns the rights to secure the economic benefits deriving from quota markets, and those benefits are assigned for the benefit of the meat

industry as provided in this Act.

23 Board to consider establishment of quota allocation mechanisms in certain circumstances

Where a quota market exists, the Board must establish and operate a mechanism for the allocation of access to that quota market if satisfied that the operation of an allocation mechanism would be consistent with the Board's objects.

Compare: 1997 No 105 s 26

24 Requirements for allocation mechanisms

(1) The Board must not establish any particular allocation mechanism for any quota market unless it is consistent with the Board's objects.

(2) An allocation mechanism---

(a) must provide for or allow trading in allocated access; and

(b) must provide for the allocation of access to existing participants in the meat export industry who are prospective participants in the market concerned; and

(c) must provide for the proportionate adjustment of amounts of access already allocated or set aside under it where there has been an alteration of the total access at zero or concessional tariff rates to the market concerned.

(3) An allocation mechanism must also specify---

(a) the products to which it applies:

(b) the quantity of products to which it applies:

(c) the country or group of countries where the relevant quota market exists:

(d) the tariff rate applying to each product concerned.

(4) Without limiting what an allocation mechanism may include, an allocation mechanism may provide for consideration to be given to the proportion of quota allocated to a particular quota holder or applicant that was unused in the previous year when determining the allocation of quota or any adjustment of allocation of quota to that quota holder or applicant for any year.

Compare: 1997 No 105 s 27

25 Limitations on contents of allocation mechanisms

(1) An allocation mechanism must not contain any element that---

(a) excludes (or provides for the exclusion of) any person from the allocation of access to the market concerned on the ground that the person has not given a liability undertaking; or

(b) imposes (or provides for the imposition of) any condition or limitation on the allocation of access to the market concerned to any person on the ground that the person has not given a liability undertaking; or

(c) discriminates (or provides for discrimination) between persons who have given a liability undertaking and persons who have not.

(2) An allocation mechanism must not contain any element having any of the effects specified in subsection (3), or contain any power to make the allocation of access to the market concerned subject to the imposition of any condition or requirement, except to the extent (if any) that is necessary---

(a) to ensure that the mechanism is consistent with the Board's objects;
or

(b) to avoid jeopardising the continuing acceptance by authorities responsible for a quota market of the allocation by authorities in New Zealand of access to that market on current terms.

(3) The effects referred to in subsection (2) are---

(a) excluding persons from the allocation of access to the market concerned:

(b) imposing any condition or limitation on the allocation to any person of access to the market concerned (except as provided in section 24(4));

(c) discriminating between persons.

(4) An allocation mechanism must not require persons to give (or provide for persons to be required to give) information to the Board, except to the extent (if any) that is necessary to enable the mechanism to operate effectively.

(5) In this section and section 32,---

allocation includes consideration for allocation and eligibility for allocation

give, in relation to a liability undertaking, includes---

(a) accept, agree to, concede, enter into, execute, grant, procure, promise, sign, surrender, and undertake; and

(b) undertake to give

liability undertaking means an agreement not to claim, agreement not to sue, exclusion of liability, forbearance, guarantee, indemnity, limitation of liability, limitation on the right to claim, limitation on the right to sue, waiver, warranty, or other similar condition, covenant, restriction, or undertaking (whether given or to be given to or in respect of the Board or to or in respect of any other person or persons).

Compare: 1997 No 105 s 28

26 Consultation

The Board must not establish any particular allocation mechanism without consulting those meat industry organisations the Board thinks appropriate about its proposed establishment.

Compare: 1997 No 105 s 29

27 Amendment of allocation mechanisms

(1) The Board may at any time amend an allocation mechanism.

(2) Sections 24 to 26 apply to the amendment of an allocation mechanism as if it were the establishment of a new allocation mechanism having the effect of the existing mechanism as proposed to be amended, unless the amendment clearly has---

(a) No impact on the shares of quota allocated to any person; and

(b) No impact on whether or not a person receives any allocation in any subsequent year; and

(c) No significant financial impact on any person to whom quota has been allocated.

Compare: 1997 No 105 s 30

28 Exports must be in accordance with allocation mechanism

Where the Board has an allocation mechanism in operation in relation to a quota market, no person may export any meat product to that quota market, directly or indirectly, unless---

(a) the person is the holder of quota access under the relevant allocation mechanism; and

(b) the person is the holder of a valid quota certificate for the meat product issued by the Board under section 33; and

(c) the export is in accordance with that allocation mechanism and that certificate.

29 Review of allocation mechanisms

(1) The Board may at any time review any allocation mechanism.

(2) The Board must review each unrevoked allocation mechanism at intervals not greater than 5 years. The first review of each allocation mechanism after the commencement of this Act must occur within 5 years of that commencement.

(3) At the Minister's request, the Board must provide to the Minister a report on a review of any allocation mechanism.

(4) Sections 23 to 26 apply to the review of an allocation mechanism as if it were the establishment of a new allocation mechanism that is identical;

but,---

(a) if (by virtue of section 23) the Board would not be able to establish any new mechanism, it must as soon as practicable revoke the mechanism reviewed; and

(b) if (by virtue of section 24 or section 25) the Board would be required to establish an allocation mechanism different from the mechanism reviewed, it must, as soon as practicable, replace the mechanism reviewed with a different mechanism.

Compare: 1997 No 105 s 31

30 Revocation of allocation mechanisms

(1) If satisfied that a quota market has ceased to exist, the Board must, as soon as practicable, revoke every allocation mechanism relating to that market.

(2) The revocation of an allocation mechanism (whether under section 29(4) or under subsection (1))---

(a) does not limit or affect---

(i) the ability of the Board to put into effect any element of it providing for the adjustment of amounts of access already allocated or set aside under it; or

(ii) the ability of the Board to take action under section 34 in respect of it; and

(b) subject to paragraph (a)(i), does not revoke or otherwise affect any allocation already made or set aside under it; and

(c) does not affect the enforcement of any breach of the allocation mechanism occurring before its revocation.

Compare: 1997 No 105 s 32

31 Notifications

(1) As soon as practicable after establishing or amending an allocation mechanism, the Board must---

(a) publish in the Gazette a notice that it has done so; and

(b) give a written description of the mechanism (in the case of an amendment to a mechanism, indicating the amendment) to---

(i) all meat industry organisations the Board thinks appropriate; and

(ii) every other person the Board thinks likely to be directly affected by the mechanism or amendment.

(2) Every notice must specify the matters referred to in section 24(3), and

indicate that copies of a description of the mechanism are available from the Board.

(3) As soon as practicable after revoking an allocation mechanism, the Board must---

(a) publish in the Gazette a notice that it has done so; and

(b) give written notice that it has done so to---

(i) all meat industry organisations the Board thinks appropriate; and

(ii) every other person the Board thinks likely to be directly affected by the revocation.

(4) As soon as practicable after any access is allocated under an allocation mechanism, the Board must publish in the Gazette and give to every person who has applied for market access under that mechanism, and to every other person the Board thinks likely to be directly affected by the allocation, in writing, notice that it has done so, specifying the mechanism and, in respect of each allocation, its amount and the name of the person to whom it was made.

Compare: 1997 No 105 s 33

32 Decisions

(1) Subject to subsection (2), a decision maker exercising a power of decision relating to which of several persons should be allocated access, how much access (if any) each of several persons should be allocated, or both, must take into account their existing investment (if any) and committed future investment (if any) in the distribution, marketing, packaging, or processing of meat products for export.

(2) Subject to subsection (3), a decision maker must exercise a power of decision consistently with the Board's objects.

(3) In exercising a power of decision, a decision maker must not---

(a) exclude any person from the allocation of access to the market concerned on the ground that the person has not given a liability undertaking; or

(b) impose any condition or limitation on the allocation of access to the market concerned to any person on the ground that the person has not given a liability undertaking; or

(c) discriminate between persons who have given a liability undertaking and persons who have not.

(4) If---

(a) to have regard to any matter in exercising a power of decision; or

(b) to allocate access subject to the imposition of any condition or requirement; or

(c) to recommend that access should be allocated subject to the imposition of any condition or requirement,---
would have any of the effects specified in subsection (5), the decision maker concerned must not do so, except to the extent (if any) that is necessary to do any of the things specified in subsection (6).

(5) The effects referred to in subsection (4) are---

(a) excluding persons from the allocation of access to the market concerned:

(b) imposing any condition or limitation on the allocation to any person of access to the market concerned (except as provided in section 24(4));

(c) discriminating between persons.

(6) The things referred to in subsection (4) are to---

(a) ensure that the allocation mechanism concerned is consistent with the Board's objects; or

(b) avoid jeopardising the continuing acceptance by authorities responsible for the quota market concerned of the allocation by authorities in New Zealand of access to that market on the current terms.

(7) In exercising a power of decision, a decision maker must not require persons to give information to the Board (or to any other person), except to the extent (if any) that is necessary to enable the allocation mechanism concerned to operate effectively.

Compare: 1997 No 105 s 34

33 Issue of quota certificates by Board

(1) The Board may issue quota certificates to persons who have been allocated quota under an allocation mechanism or who have acquired quota from another quota holder.

(2) The Board may issue quota certificates only to persons who are registered as exporters under both---

(a) this Part of this Act; and

(b) Part 5 of the Animal Products Act 1999 (unless the person is specifically exempted from the requirement to register under that Part 5).

34 Board may take action in certain circumstances

(1) The Board may take all or any of the actions specified in subsection (2), if---

(a) it is satisfied that any person has taken an action that has had, is likely to have had, or is likely to have, the effect of jeopardising the continuing acceptance by authorities responsible for a quota market of the allocation by authorities in New Zealand of access to that market on the current terms; or

(b) it is satisfied that any person has taken action intended to enable the person or any other person to obtain in any period access to any quota market---

(i) for which no allocation has been made to the person under the relevant mechanism; or

(ii) for an amount in excess of an allocation made to the person under the mechanism; or

(c) it has strong grounds to believe that a person is intending to take action that would have any of the effects described in paragraph (a) or paragraph (b).

(2) The actions are,---

(a) by written notice to the person concerned, to suspend, until a day (not later than 1 year after the date of the notice) specified in the notice, the person's ability to export meat products, or meat products of a specified kind, to the market to which the allocation mechanism concerned relates:

(b) notwithstanding the elements of that allocation mechanism,---

(i) by written notice to the person, to refuse, for a period (of no more than 12 months) from the date of the notice specified in the notice, to issue quota certificates to that person under that mechanism; or

(ii) to cancel any quota certificates issued to that person under that mechanism; or

(iii) both.

(3) The Board must not act under subsection (2) unless---

(a) it has first consulted the person concerned, and told the person the reasons for its---

(i) being satisfied that the person has taken or is intending to take, an action of a kind specified in subsection (1); and

(ii) intending to act; or

(b) it is satisfied that there are good reasons for acting without consultation.

(4) If the Board has taken action under subsection (2) without first consulting the person concerned and telling the person the reasons referred to in subsection (3)(a), it must, as soon as it practicably can after acting, give the person written notice of---

(a) those reasons; and

(b) its reasons for acting without consultation; and

(c) in the case only of the cancellation of quota certificates, the certificates cancelled.

(5) In a case where subsection (1)(c) applies, any action taken by the Board under subsection (2) must be limited to such actions as are reasonably practicable to prevent the actions that the Board believes the person in question is intending to take.

(6) Nothing in section 25 limits or affects this section.
Compare: 1997 No 105 s 36

35 No liability for changes in access arrangements

(1) Neither the Crown nor the Board is liable to pay damages to any person for, or for any consequence of,---

(a) any reduction (including a reduction to zero) in the quantity of access to any quota market allocated to any person arising out of a reduction in the total quantity of access to that quota market; or

(b) any action leading to, involved in, or arising out of---

(i) the imposition by authorities responsible for a quota market of any arrangements limiting access to that market (whether new arrangements, or arrangements substituted for existing arrangements); or

(ii) the amendment by authorities responsible for a quota market of any such arrangements.

(2) Neither the Crown nor the Board is liable to any person for, or for any consequence of, any action, inaction, matter, or thing, by reason only that it is not referred to in subsection (1).

Compare: 1997 No 105 s 37

36 Fees in relation to quota management systems

(1) For the purpose of recovering the costs to the Board of carrying out its functions in relation to quota markets, the Board may set fees, payable by meat exporters in respect of applications for or allocations of quota, or both, that---

(a) are fair and reasonable; and

(b) provide the Board with adequate funding to carry out its quota management function for the relevant quota management system, including general administration costs.

(2) The Board must publish any fees set under this section, and any changes

to the fees, by notice in the Gazette.

(3) The Board must take all reasonable steps to consult with meat exporters on the initial level of the fees, and on any increase in the fees.

(4) The Board may, by written notice to the person concerned, refuse to issue a quota certificate to any person who has not paid any relevant fee within 30 days of the due date for its payment.

(5) Nothing in this section authorises the collection of fees in respect of costs arising from events taking place before the commencement of this Act, unless those costs (if any) could have been recovered under the Meat Board Act 1997. In determining whether any such costs could have been recovered under that Act, no regard may be had to the provisions of this section.

(6) In subsection (1), adequate funding includes funding for and in relation to any liability or possible liability of the Board in respect of its quota management function arising from events occurring after the commencement of this Act.

(7) A notice under subsection (2)---

(a) is to be treated as a regulation for the purposes of the Regulations (Disallowance) Act 1989; but

(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

37 Transitional provision for existing allocation mechanisms

Unless it is sooner revoked, a mechanism that immediately before the commencement of this Act the former Board had in place in relation to a quota market has effect as if it were an allocation mechanism properly established by the Board under this Act (and notified under section 31 on that commencement); and---

(a) any action that could have been taken by the former Board under the Meat Board Act 1997 in relation to an event that took place before the commencement of this Act may be taken by the Board under that Act as if it had not been repealed; and

(b) any transfers of quota, allocations, amendments to allocations and reallocations of quota, and any other similar things done under or in relation to such a mechanism, continue as if done under this Act.

Quota compliance audits

38 Quota compliance audits

(1) From time to time the Minister must cause to be conducted a compliance audit of each quota management system established and operated by the Board.

(2) A compliance audit of a quota management system must assess the effectiveness of the system in achieving compliance with the

Crown's international treaty obligations relating to the relevant quota market, and any obligations deriving from those treaty obligations, including the performance of the Board in relation to---

(a) its functions and powers under section 34 (Board may take action in certain circumstances); and

(b) its enforcement of section 28 (exports must be in accordance with allocation mechanism).

(3) The person conducting the audit of a quota management system must conduct it on the basis of the Board's performance at the time the audit takes place, and also have regard to the Board's performance since the time of the last audit of that system (or since the commencement of this Act, in the case of the first audit of the system after that commencement).

39 Timing of audits

(1) In respect of each quota management system,---

(a) scheduled quota compliance audits must be commenced during each 3-yearly scheduled audit period, unless the Minister otherwise determines; and

(b) if the Minister decides not to proceed with a scheduled audit, a further scheduled audit must be commenced during the next 3-yearly scheduled audit period, unless the Minister again otherwise determines.

(2) The Minister may require an unscheduled quota compliance audit to be conducted at any time.

(3) In considering the need for an audit, the Minister---

(a) must consider the cost of an audit to the Board; and

(b) may have regard to any other factors the Minister considers relevant; and

(c) must consult with the Board in the case of scheduled audits, and in the case of an unscheduled audit may consider the views of the Board; and

(d) may consider the views of any other persons the Minister thinks appropriate.

(4) The first scheduled audit of each quota management system must be commenced during the period commencing with 1 January 2006 and ending with 30 June 2006.

(5) In this section and sections 40 and 41,---
scheduled, in relation to a quota compliance audit, means an audit commenced during the period 1 January to 30 June (both dates inclusive) in---

(a) any of the years 2006, 2009, and 2012; and

(b) any later year determined by adding a multiple of 3 to the year 2012

3-yearly scheduled audit period means the period 1 January to 30 June (both dates included) in any of the years referred to in paragraphs (a) and (b) of the definition of scheduled

unscheduled in relation to a quota compliance audit, means any audit that is not a scheduled audit.

40 Terms of reference

(1) The Minister determines the terms of reference for a quota compliance audit.

(2) In determining the terms of reference---

(a) the Minister must consult with the Board in the case of scheduled audits; and

(b) in the case of an unscheduled audit, the Minister may consider the views of the Board; and

(c) the Minister may in any case consider the views of any other persons the Minister considers appropriate.

41 Appointment of person to conduct audit

(1) The Minister appoints the person to conduct a quota compliance audit, after consultation with the Board in the case of a scheduled audit.

(2) The person must be the chief executive of the Ministry or a person recognised for the purpose by the chief executive of the Ministry.

42 Powers of auditor

(1) The person appointed to conduct a quota compliance audit (the auditor) may, for the purposes of the audit,---

(a) examine the Board's systems, processes, and records:

(b) examine the systems, processes, and records of any meat processor or exporter.

(2) For the purposes of an audit, the auditor may at any reasonable time (within or outside business hours)---

(a) enter any place where---

(i) any meat products are held or are likely to be held; or

(ii) any documents relating to any meat products are held or are likely to be held:

(b) at that place examine production facilities, packing facilities, and processing lines:

(c) inspect or take samples of any meat product, or any other input, substance, or thing which has been, is, or may be in contact with or in the vicinity of any meat product, and test or analyse or arrange for the testing or analysis of such samples:

(d) examine, inquire about, and copy any documents or other records (including records held in electronic or other form), whether held by the Board or by or on behalf of any meat processor or exporter, relating to obligations and duties under this Act, and for this purpose may---

(i) remove documents or records to another place for the purpose of copying them, for so long as is reasonably necessary to allow for their copying; and

(ii) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in a computer or other device or system.

(3) Subsection (2)(d)(ii) does not override the privilege against self-incrimination.

(4) An auditor must not under subsection (2) enter any place that is not a place of business without a warrant issued under subsection (5).

(5) A District Court Judge or a Court Registrar (not being a member of the police), who on an application in writing made on oath is satisfied that, as a consequence of the inspection under subsection (2) 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 meat product; or

(b) any document relating to any meat product,---
may issue a warrant in form 1 in Schedule 3 authorising the person named in the warrant to enter and inspect the other place.

(6) A warrant must be directed to the auditor by name, or to a member of the police by name or to every member of the police, but, in any of these cases, the warrant may be executed by any member of the police.

(7) The warrant may be issued unconditionally or subject to conditions.

(8) An auditor or member of the police entering any place under this section---

(a) must identify himself or herself to the occupier; and

(b) if asked by an occupier to do so, must produce evidence of identity; and

(c) if entering under a warrant issued under subsection (5), must comply with section 63; and

(d) in any case, must comply with section 64.

43 Conduct of audit

The quota compliance audit must be conducted in accordance with the terms of reference determined by the Minister under section 40.

44 Report of auditor

(1) The person who conducts a quota compliance audit must---

(a) prepare a written report on the conclusions reached and recommendations formulated as a result of conducting the audit; and

(b) give a copy of that report to the Minister, the chief executive of the Ministry, the chairman and the chief executive officer of the Board, and the person (if any) to whom the chief executive officer of the Board has delegated responsibility for quota management.

(2) The Minister may give directions as to any further distribution of the report or any part of the report, and as to its availability for viewing.

(3) The Minister must consult with the Board before giving directions as to the distribution or availability of the report or any part of it to persons other than other Ministers or persons within the public service (as defined in section 27 of the State Sector Act 1988).

45 Confidentiality of report

(1) Subject to any direction by the Minister under section 44(2), the report on the quota compliance audit, including any draft reports and related working papers---

(a) is not publicly available; and

(b) remains confidential to the recipients.

(2) Despite subsection (1), any recommendations in the report may be made available to members of the Board and to any employees of the Board who may be required to give effect to the recommendations.

(3) Nothing in the Official Information Act 1982 applies to require or allow disclosure of a report or any part of a report on a quota compliance audit, or the whole or any part of any draft reports or related working papers, under this Act.

46 Obligations to implement recommendations of report

(1) The Board and the chief executive of the Ministry must attempt to agree upon a plan to give effect to those recommendations of a report on a quota compliance audit that the chief executive considers require implementation in

such a manner.

(2) If agreement cannot be reached on an implementation plan within 30 working days after the report is given to the chief executive officer of the Board under section 44(1),---

(a) the Minister may provide the Board with an implementation plan; and

(b) the Board must implement that plan within a reasonable period of time.

(3) If the Board fails, to the satisfaction of the Minister, to implement within a reasonable time a plan agreed or provided under subsection (1) or subsection (2), the Minister may---

(a) remove any 1 or more directors from the Board; and

(b) by written notice to the Board, remove or suspend the authority of the Board to issue quota certificates in relation to 1 or more quota markets.

(4) A director removed from the Board under subsection (3) must be replaced in accordance with clause 2(3) or (4) (whichever is appropriate) of Schedule 2.

(5) The Crown is not liable for any loss resulting from a removal or suspension under subsection (3)(b) of the Board's authority to issue quota certificates.

47 Board to pay for quota compliance audits

The Board must pay the person who conducts a quota compliance audit---

(a) the fees prescribed or provided for in regulations made under this Act; or

(b) in the absence of such regulations, the fees agreed between the Minister (after consultation with the Board) and the person.

Registration of exporters

48 Meat exporters to be registered

Except as provided in sections 49 to 51, a person must not export a meat product at any time when the person is not registered as an exporter under this Act.

Compare: 1997 No 105 s 18

49 Exemptions for cooked and processed products

Section 48 does not prevent a person who is not registered as an exporter from exporting a cooked or processed meat product of any kind to a market at any time if, before that time, the Board (or the former Board)---

(a) has by notice in the Gazette authorised the export of product of that kind to that market by persons not registered as exporters; and

(b) has not by notice in the Gazette revoked the notice.

Compare: 1997 No 105 s 19

50 Exemptions for limited consignments

Section 48 does not prevent a person who is not registered as an exporter from exporting a consignment of meat product of any kind to a market at any time if---

(a) before that time, the Board (or the former Board)---

(i) has by notice in the Gazette authorised the export by persons not registered as exporters to that market of consignments of product of that kind no larger than a size specified in the notice; and

(ii) has not by notice in the Gazette revoked the notice; and

(b) the consignment is no larger than the size specified.

Compare: 1997 No 105 s 20

51 Exemptions for trial and sample shipments

(1) For the purpose of enabling trial or sample shipments of meat products, the Board may give any person written exemption from section 48, specifying---

(a) a market or markets to which meat products may be exported; and

(b) the kind or kinds of meat product that may be exported to the market (or each of the markets); and

(c) in relation to each market specified, the maximum quantity of each kind of meat product specified that may be exported; and

(d) the day on which the exemption expires.

(2) Section 48 does not prevent a person who is not registered as an exporter from exporting meat products in accordance with an unexpired exemption given to that person by the Board under subsection (1) (or by the former Board under section 21(1) of the Meat Board Act 1997).

Compare: 1997 No 105 s 21

52 Applications and registration

(1) Any person may apply in writing to the Board for registration as an exporter, or for renewal of registration as an exporter that has not expired.

(2) The Board must register an applicant as an exporter, or renew the applicant's registration, if the application---

(a) provides the applicant's name and address (including telephone number and any fax number or electronic mail address); and

(b) is accompanied by the appropriate fee (if any), fixed by the Board under section 55.

Compare: 1997 No 105 s 22

53 Registration to be for 3 years

(1) Unless earlier renewed, registration of a person under section 52 expires at the close of 30 September in the year 3 years after the year in which it was issued.

(2) Unless earlier further renewed, a renewed registration expires at the close of 30 September in the year 3 years after the year in which it was last renewed.

Compare: 1997 No 105 s 23

54 Registration may be revoked on request

The Board must revoke a person's registration as an exporter if the person so requests.

Compare: 1997 No 105 s 24

55 Fees

(1) For the purpose of recovering the costs to the Board of administering the registration of exporters, the Board may set fees, payable by meat exporters who are registered or persons seeking registration as exporters, that---

(a) are fair and reasonable; and

(b) provide the Board with adequate funding to carry out its registration function.

(2) The Board must publish any fees set under this section, and any changes to the fees, by notice in the Gazette.

(3) The Board must take all reasonable steps to consult with meat exporters on the initial level of the fees if they are proposed to be higher than those charged under the Meat Board Regulations 1998, and on any increase in the fees.

(4) A notice under subsection (2)---

(a) is to be treated as a regulation for the purposes of the Regulations (Disallowance) Act 1989; but

(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

56 Transitional provision for existing export licences

Subject to section 54, any person who, immediately before the commencement of this Act, held an export licence issued under section 22 of the Meat Board Act 1997 is deemed to be registered as an exporter under section 52 until the date on which that export licence would have expired under section 23 of the Meat Board Act 1997.

Compare: 1997 No 105 s 25

Matters not affected

57 Matters not affected

(1) Nothing in this Part prevents the Crown from engaging in international trade negotiations for the purpose of establishing, amending, or terminating quota markets.

(2) Nothing in this Part derogates from any requirement of Part 5 of the Animal Products Act 1999, or any related requirement of or under that Act.

Part 4 Miscellaneous provisions

Meetings of livestock farmers

58 Meetings of farmers

(1) In every financial year, the Board must,---

(a) not later than 31 December 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 March in that financial year) for a meeting of livestock farmers; and

(b) on the day fixed, hold such a meeting.

(2) 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 livestock farmers.

(3) 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 by the Board.

Compare: 1997 No 105 s 43

59 Matters for consideration at annual general meeting

(1) The Board must ensure that at every annual general meeting each of the following matters are considered:

(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) discussion of the Board's annual financial statement and report:

(c) consultation on use of the Board's reserves for any industry-good project:

(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.

(2) The Board may put before any annual general meeting a resolution to approve maximum annual aggregate remuneration and benefits to be paid to industry-selected directors (for services as a director) during the next financial year.

(3) Notwithstanding subsection (2), 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 industry-selected directors (for services as a director) during the current financial year.

Compare: 1997 No 105 s 44

Enforcement

60 Authorised persons

(1) The Board may appoint or authorise suitably qualified and trained persons to exercise the powers conferred by section 61.

(2) The chief executive of the Ministry may, by notice in writing, give directions to the Board, or to any authorised person, as to the exercise by authorised persons of their powers under this Act, and the Board and any authorised person must take all reasonable steps to ensure those directions are complied with.

61 Powers of inspection

(1) An authorised person may exercise all or any of the powers specified in subsection (2) at any reasonable time (within or outside business hours) for the purpose of---

(a) ascertaining whether a person has taken or is intending to take an action of a kind described in section 34(1)(a) or (b); or

(b) obtaining evidence that a person has taken or is intending to take such an action.

(2) The powers referred to in subsection (1) are the power to---

(a) enter any place where---

(i) any meat products are held or are likely to be held; or

(ii) any documents relating to any meat products are held or are

likely to be held:

(b) inspect any meat product there:

(c) inspect any document there relating to any meat product:

(d) take or make copies of, or extracts from, any document inspected under this subsection.

(3) An authorised person must not under subsection (2) enter any place that is not a place of business without a warrant obtained under section 62.

(4) For the purpose of the power conferred by subsection (2)(d), the person exercising the power may---

(a) take possession of and remove any document from the place where it is held, for so long as is reasonably necessary to allow for it to be copied:

(b) require any person to reproduce in usable form, or help reproduce in usable form, any information recorded or stored on a document electronically or by any other means.

(5) Subsection (4)(b) does not override the privilege against self-incrimination.

Compare: 1997 No 105 s 71

62 Warrant to inspect place other than place of business

(1) A District Court Judge or a Court Registrar (not being a member of the Police) who, on an application in writing made on oath, is satisfied that there are reasonable grounds to believe that---

(a) a person has taken or is intending to take an action of a kind described in section 34(1)(a) or (b); and

(b) there is or is likely to be in some place that is not a place of business any meat product, or any document relating to any meat product,--- may issue a warrant in form 2 in Schedule 3 authorising the person named in the warrant to enter and inspect the place.

(2) A District Court Judge or a Court Registrar (not being a member of the Police) who, on an application in writing made on oath, is satisfied that, as a consequence of the inspection under section 61 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 any meat product, or any document relating to any meat product, may issue a warrant in form 3 in Schedule 3 authorising the person named in the warrant to enter and inspect the other place.

(3) A warrant issued under subsection (1) or subsection (2) may be issued unconditionally or subject to conditions.

(4) A warrant under this section must be directed to the authorised person

by name, or to a member of the police by name or to every member of the police, but, in any of these cases, the warrant may be executed by any member of the police.

Compare: 1997 No 105 s 72

63 Duties of persons executing warrants

A person executing a warrant issued under section 62, or under section 42, in respect of any place---

(a) must produce the warrant on initial entry and, if asked by an occupier, at any time afterwards; and

(b) if an occupier is present on initial entry, must identify himself or herself to that occupier; and

(c) if asked by an occupier to do so, must produce evidence of identity.
Compare: 1997 No 105 s 73

64 Other duties of persons carrying out inspections

(1) A person who carries out an inspection under section 61, or under section 42, when no occupier of the place inspected was present must, on completing the inspection, leave prominently in the place a notice stating---

(a) the day and time when the inspection was carried out; and

(b) the person's name.

(2) If the person who carries out the inspection takes a document, article, or thing from the place inspected, the person must, on completing the inspection, leave prominently in the place a schedule of documents, articles, and things taken.

(3) If it is not practicable to prepare the schedule on completing the inspection, or if an occupier of the place inspected consents, the person who carries out the inspection may,---

(a) instead of leaving the schedule, leave a notice that---

(i) a document, article, or thing has been taken; and

(ii) within 7 days of the inspection the schedule will be delivered to, left for, or posted to an occupier; and

(b) within 7 days of the inspection,---

(i) deliver the schedule to an occupier; or

(ii) leave the schedule prominently in the place; or

(iii) post the schedule by registered mail to an occupier.

(4) The schedule must specify---

(a) the documents, articles, and things taken; and

(b) the place or places where they are being held; or

(c) if more than 1 place is specified, the documents, articles, and things held in each.

Compare: 1997 No 105 s 74

65 Requirement for certain persons to provide certain information to Board

(1) An exporter of meat 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 and kind of meat product exported:

(b) the estimated value of the meat product exported:

(c) the port of discharge, and destination, of the meat product exported.

(2) The licensee of licensed premises where livestock 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 and kind of livestock slaughtered:

(b) the quantities of meat product processed, produced, held, or stored:

(c) the quantities of meat product produced and intended to be sold for consumption or use in New Zealand.

(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 meat products generally; or

(b) in relation to livestock or meat products of kinds specified in the request.

(5) Instead of requesting any information under subsection (1), 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 5 of the Customs and Excise Act 1996; 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 may require information under this section, and use the

information obtained, only for the purpose of carrying out its function described in section 8(1)(a).

(7) 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, powers, or duties 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.

(8) A person to whom any information obtained under this section is published or disclosed (whether or not in accordance with subsection (7) 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.

Compare: 1997 No 105 s 75

66 Protection of persons acting under authority of Act

No authorised person or person carrying out a quota compliance audit who does any act or omits to do any act in pursuance of any of the functions or powers conferred on that person by or under this Act is under any civil or criminal liability in respect of that act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

Offences, penalties, and proceedings

67 Export-related offences

(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$200,000, who---

(a) exports any meat product contrary to section 28; or

(b) while the person's ability to export meat products of any kind to a market is suspended under section 34(2)(a), exports or attempts to export meat products of that kind to that market.

(2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$15,000, who, without reasonable excuse exports any meat product at any time when the person is not registered as an exporter under this Act.

68 Information-related offences

(1) Every person commits an offence who---

(a) without reasonable excuse, fails or refuses to comply with a request for information under section 65(1) or section 65(2); or

(b) in response to a request under section 65(1) or section 65(2), wilfully gives the Board false or misleading information.

(2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who without reasonable excuse publishes, discloses, or uses information in contravention of section 65(7), section 65(8), section 79(3), section 79(4), or section 79(5).

(3) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, who without reasonable excuse fails to return or destroy information, in contravention of section 79(9).

(4) A person who commits an offence against subsection (1) is liable on summary conviction to---

(a) a fine not exceeding \$15,000; and

(b) a further fine not exceeding \$750 for each day during which the offence continues.

69 Obstruction

(1) Every person commits an offence who---

(a) wilfully prevents, obstructs, or hinders a person exercising or attempting to exercise any of the powers conferred by section 61; or

(b) without reasonable excuse, fails or refuses to make available to a person exercising any of the powers conferred by section 61---

- (i) any document relating to any meat product; or
- (ii) any meat product.

(2) Every person commits an offence who---

(a) wilfully prevents, obstructs, or hinders a person conducting a quota compliance audit in the performance of that person's audit function; or

(b) fails without reasonable excuse to comply with any reasonable request or requirement of that person.

(3) A person who commits an offence against this section is liable on summary conviction to---

(a) a fine not exceeding \$20,000; and

(b) a further fine not exceeding \$1,000 for each day during which the offence continues.

70 Customs and Excise Act 1996 to apply to prohibited exports

(1) All the provisions of the Customs and Excise Act 1996, and any regulations made under that Act, that apply to prohibited exports apply to the export of any meat product in contravention of this Act in all respects as if the export of such meat products were prohibited under Part V of the Customs and Excise Act 1996.

(2) The penalty for an offence against section 209(1)(b) of the Customs and Excise Act 1996 in respect of the export of any meat product in contravention of section 67(1) of this Act is---

(a) in the case of an individual, a fine not exceeding \$200,000:

(b) in the case of a body corporate, the greater of---

- (i) a fine not exceeding \$200,000; or
- (ii) either---

(A) if it can be readily ascertained and if the court is satisfied that the contravention occurred in the course of producing a commercial gain, a fine not greater than 3 times the value of the commercial gain resulting from the contravention; or

(B) if the commercial gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate (within the meaning of section 2(7) and (7A) of the Commerce Act 1986), if any.

Compare: 2001 No 51 s 30

71 Strict liability

(1) In any proceedings for an offence under section 67(1), it is not necessary for the prosecution to prove that the defendant intended to commit the offence.

(2) This section does not limit section 239(4) of the Customs and Excise Act 1996 if proceedings are taken for an offence under that Act.
Compare: 2001 No 51 s 32

72 Defence available

(1) It is a defence in any proceedings for an offence under section 67(1) if the defendant proves that---

(a) the contravention was due to an event or cause beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage; and

(b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) A defendant is not, without leave of the Court, entitled as part of a defence provided by this section to rely on any of the matters specified in subsection (1)(a) unless the defendant has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the informant a notice in writing identifying the event or cause relied on by the defendant.

Compare: 2001 No 51 s 33

73 Liability of companies and persons for actions of agents or employees

(1) Any act or omission on behalf of a person other than a body corporate by---

(a) an agent or employee of that person; or

(b) any person at the direction or with the consent or agreement, whether express or implied, of any person referred to in paragraph (a),--- is treated, for the purpose of proceedings for an offence against this Act, also as the act or omission of the first-mentioned person.

(2) Any act or omission on behalf of a body corporate by---

(a) a director, agent, or employee of that body corporate; or

(b) any other person at the direction or with the consent or agreement, whether express or implied, of any person referred to in paragraph

(a)---

is treated, for the purpose of proceedings for an offence against this

Act, also as the act or omission of the body corporate.

(3) However, if proceedings are brought under section 67(1) in respect of an act or omission under subsection (1) or subsection (2) of this section, it is a good defence if the defendant proves,---

(a) in the case of a natural person (including a partner in a firm), that---

(i) he or she did not know nor could reasonably be expected to have known, that the offence was to be or was being committed; or

(ii) he or she took all reasonable steps to prevent the commission of the offence; and

(b) in the case of a body corporate, that---

(i) neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) the body corporate took all reasonable steps to prevent the commission of the offence; and

(c) in all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(4) For the purposes of this section,---

(a) a person may act as an agent of another person or body corporate whether or not the first-mentioned person is employed by the other person or body corporate and whether or not he or she is acting for reward:

(b) any agent or employee of a person acting as an agent is treated as also acting as an agent for the other person or body corporate referred to in paragraph (a).

Compare: 2001 No 51 s 34

74 Liability of directors and managers

(1) If a body corporate commits an offence under section 67(1), every director, and every person concerned in the management of the body corporate, also commits an offence under that section if it is proved that---

(a) the act or omission that constituted the offence took place with the director's or person's authority, permission, or consent; or

(b) the director or person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

(2) Every person to whom subsection (1) applies is liable on summary conviction to the fine specified in section 67(1).

(3) A person may be convicted of the offence even though the body corporate has not been charged with that offence or a similar offence.

Compare: 2001 No 51 s 35

75 Presumption as to authority

A return, record, transaction, form, application, or other information purporting to be completed, kept, or provided by, or on behalf of, any person is, for the purpose of proceedings for an offence against this Act, treated as having been completed, kept, or provided by that person unless the contrary is proved.

Compare: 2001 No 51 s 36

76 Proceedings for offences

Despite section 14 of the Summary Proceedings Act 1957, an information in respect of an offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.

Supply of information

77 Minister may require information

(1) The Board must supply to the Minister any information relating to quota markets that the Minister considers is relevant to the purpose in section 21 and that the Minister from time to time requests in writing.

(2) Subsection (1) applies only to information that is in the Board's possession or that the Board can obtain without unreasonable difficulty or expense.

Compare: 2001 No 51 s 41

78 Disclosure of information

(1) The chief executive of the Ministry (or any officer of the Ministry authorised in that behalf) and the Comptroller of Customs (or any officer of Customs authorised in that behalf) may, for the purpose of the administration of this Act or the Customs and Excise Act 1996, disclose to each other, on request, information on exporters of meat products exported or proposed to be exported.

(2) Information obtained under subsection (1) must not be disclosed except---

(a) to the persons authorised under that subsection; or

(b) for the purpose of any proceedings that have been commenced or that are reasonably in contemplation and that are connected with a matter in relation to which those persons perform their duties.

(3) No obligation as to secrecy or other restriction on the disclosure of information imposed by any enactment or otherwise prevents a disclosure under this section.

Compare: 2001 No 51 s 42

79 Board must disclose certain information to industry-good organisation

(1) Subject to this section, the Board must, if the industry-good organisation requests it, supply the organisation with the following kinds of information:

(a) information of direct relevance to the monitoring or audit of the organisation's levy returns or receipts:

(b) information of direct relevance to the organisation for trade policy or market access purposes:

(c) information of a statistical kind that relates directly to the production and consumption of meat in New Zealand and the export of meat from New Zealand:

(d) information on the agricultural, trade, or economic policies, agricultural productions, consumption, and imports or exports of any country other than New Zealand.

(2) Subsection (1) applies only to information that is in the Board's possession.

(3) Information of the kind referred to in subsection (1)(a) may be used only for the purpose of monitoring or auditing the industry-good organisation's levy returns or receipts, and for no other purpose.

(4) Information of the kinds referred to in subsection (1)(b) and (c) that is acquired by the Board after the commencement of this Act may be supplied to the industry-good organisation only if---

(a) the information would not allow the organisation to separately identify or deduce data specific to a particular company or other trading entity, or a particular group of associated companies or entities; or

(b) information specific to a particular company or other trading entity, or a particular group of companies or entities, cannot be separately identified or deduced from the information requested;---
except to the extent that the company or entity or group of companies or entities concerned has given its or their prior approval in writing to the supply of the information.

(5) Information of the kinds referred to in subsection (1)(b) and (c) that was held by the Board at the commencement of this Act and that the Board has supplied to the industry-good organisation may be supplied by the industry-good organisation to any other person only in the manner and circumstances described in subsection (4)(a) and (b), except to the extent that the company or entity or group of companies or entities concerned has given its or their prior approval in writing to the supply of the information.

(6) The information referred to in subsection (1) includes information of the relevant kind that is---

- (a) held by the Board at the commencement of this Act; or
- (b) subsequently acquired by the Board.

(7) In respect of information supplied to the industry-good organisation that was acquired by the Board after the commencement of this Act, the Board may charge the industry-good organisation an appropriate amount for the purpose of recovering part of the costs of the Board's acquisition of the information. The amount charged is recoverable by the Board as a debt.

(8) This section ceases to apply to require the Board to supply information to the industry-good organisation if the Minister is satisfied, and certifies accordingly, that---

(a) the industry-good organisation is no longer owned by a trust the beneficiaries of which consist of all livestock farmers (except any reasonably excluded for reasons of administrative cost); or

(b) the majority of the industry-good organisation's directors are no longer elected by livestock farmers broadly in proportion to their share of the industry; or

(c) the industry-good organisation has been unable to collect levies, neither in relation to sheepmeat nor to beef, under the Commodity Levies Act 1990 for the entire immediately preceding year.

(9) Where the Minister gives a certificate under subsection (8), the industry-good organisation must either return to the Board or destroy information of a kind referred to in subsection (5) that would allow a person to separately identify or deduce data specific to a particular company or other trading entity, or a particular group of associated companies or entities.

No Crown liability

80 No Crown liability for Board's debts
The Crown is not liable to any person for any amounts owing by the Board.

Regulations and notices

81 Regulations
The Governor-General may by Order in Council make regulations for all or any of the following purposes:

(a) prescribing matters of the kind referred to in section 13(5) in relation to elections or appointments of directors in the circumstances described in section 13(4):

(b) prescribing the manner and circumstances in which meetings held under section 58 may or must be called:

(c) prescribing procedures (not inconsistent with this Act) for meetings

held under section 58, 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) who (if anybody) may cast a vote as a proxy for an eligible livestock farmer, and the circumstances (if any) in which a proxy vote may be cast; and
 - (iv) any weighting to be given to votes cast (or any means by which such a weighting may be calculated or ascertained):
- (d) prescribing fees payable in respect of quota compliance audits, or a means of establishing or determining fees for quota compliance audits:
- (e) 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.

Compare: 1997 No 105 s 77

82 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 fax;
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 communications) 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.

Compare: 1997 No 105 s 78

Transitional provisions

83 Existing directors

(1) Every person who, immediately before the commencement of this Act, was a director of the former Board ceases to be a director of the Board on the commencement of this Act.

(2) No compensation is payable for termination under subsection (1) of the appointment of a person as a director.

84 Transfer of assets and liabilities of Board

(1) Subject to sections 12 and 79 and to this section, the Board may transfer any of its assets and liabilities to the industry-good organisation.

(2) In particular, despite any limitation in section 79(3) and (4), the Board may transfer to the industry-good organisation---

(a) rolls of livestock farmers compiled by the former Board for the purpose of elections of directors of the former Board; and

(b) any similar rolls compiled or held for the purposes of a referendum of livestock farmers; and

(c) any data compiled as a result of an election or referendum held using those rolls.

(3) The Board may not, during the 3-month period referred to in subsection (6), transfer to the industry-good organisation any liabilities relating to its quota management function.

(4) Where the Board transfers to the industry-good organisation a benefit or liability under any contract, agreement, conveyance, deed, lease, licence, or other instrument or undertaking, then, to the extent appropriate to the thing transferred,---

(a) the organisation, instead of the Board, is to be treated as the person by whom the contract, agreement, conveyance, deed, lease, instrument, or undertaking was entered into or made or given; and

(b) to the extent that the relevant contract, agreement, conveyance, deed, lease, instrument, or undertaking was previously binding on and enforceable by, against, or in favour of the Board, it becomes binding on and enforceable by, against, or in favour of the organisation.

(5) Nothing effected or authorised by a transfer under this section---

(a) must be regarded as placing the Board (or former Board) or the industry-good organisation, or any other person, in breach of contract or confidence or as otherwise making any of them liable of a civil wrong; or

(b) must be regarded as giving rise to a right for any person to terminate or cancel a contract or arrangement, or to accelerate the performance of any obligation; or

(c) must be regarded as placing the Board (or former Board) or the industry-good organisation, or any other person, in breach of an enactment, rule of law, or contractual provision prohibiting, restricting, or regulating the assignment or transfer of property or the disclosure of information; or

(d) releases a surety wholly or in part from any obligation; or

(e) invalidates or discharges any contract.

(6) Any transfer under this section must be made not later than 3 months after the date of commencement of this Act.

Tax provisions relating to restructuring

85 Tax provisions relating to Meat and Wool New Zealand Limited

(1) The transfer of assets and liabilities from the Board to Meat and Wool New Zealand Limited pursuant to section 84---

(a) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968; and

(b) is not a sale, disposal, disposition, distribution, or transfer of any asset or any liability for the purposes of the Income Tax Act 1994; and

(c) is not a supply of goods or services for the purposes of the Goods and Services Tax Act 1985.

(2) For the purposes of the Income Tax Act 1994 and the Goods and Services Tax Act 1985, as the case may be, Meat and Wool New Zealand Limited is treated as the same person as the former Board---

(a) for the purposes of applying the depreciation provisions in subpart EG of the Income Tax Act 1994; and

(b) when determining the date on which Meat and Wool New Zealand Limited is treated as acquiring any asset or liability; and

(c) when determining the cost or any amount of consideration provided or received in respect of any asset or liability of Meat and Wool New Zealand Limited; and

(d) when determining the unexpired portion of any amount of accrual expenditure of the former Board attributable to Meat and Wool New Zealand Limited; and

(e) for the purpose of applying any matching, spreading, or amortisation regime in the Income Tax Act 1994 (including the finance lease and hire purchase regimes) or the Goods and Services Tax Act 1985, as the case may be,

to any asset or liability transferred from the Board to Meat and Wool New Zealand Limited; and

(f) to the extent not specifically contemplated by paragraphs (a) to (e), for the purpose of determining the treatment of any asset or liability transferred from the Board to Meat and Wool New Zealand Limited under the Income Tax Act 1994 or the Goods and Services Tax Act 1985, as the case may be.

(3) For the purposes of the Income Tax Act 1994, the trust formed to hold shares in Meat and Wool New Zealand Limited, the beneficiaries of which consist of all livestock farmers (except for any reasonably excluded for reasons of administrative cost), is treated as---

(a) having held all the shares issued to it by Meat and Wool New Zealand Limited on or before the date of commencement of this Act, at all times prior to that date; and

(b) subject to section OD 5(5) of the Income Tax Act 1994, having held any voting interest or market value interest attributable to those shares.

(4) The issue, before the date of commencement of this Act, by Meat and Wool New Zealand Limited of shares in that company to the trust formed to hold shares in Meat and Wool New Zealand Limited, the beneficiaries of which consist of all livestock farmers (except for any reasonably excluded for reasons of administrative cost),---

(a) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968; and

(b) is not a dividend for the purposes of the Income Tax Act 1994; and

(c) is not otherwise gross income of the trust for the purposes of the Income Tax Act 1994.

(5) On and at all times before the date of commencement of this Act, Meat and Wool New Zealand Limited is treated as having existed as a member of---

(a) the same wholly-owned group of companies that includes the former Board and any of its subsidiary companies, for the purposes of subpart IG of the Income Tax Act 1994; and

(b) the same group of companies that includes the former Board and any of its subsidiary companies, for the purposes of section IG 6(6)(b) of that Act.

86 Available subscribed capital

(1) In the application of the definition of available subscribed capital in section OB 1 of the Income Tax Act 1994,---

(a) Meat and Wool New Zealand Limited is treated as having received an amount of \$98,108,000 in consideration for the shares on issue on the date of commencement of this Act; and

(b) the available subscribed capital that arises under paragraph (a) is treated as allocated, as available subscribed capital of and between the classes of shares of Meat and Wool New Zealand Limited on issue on the date of commencement of this Act, to the shares issued to the trust formed to hold shares in Meat and Wool New Zealand Limited, the beneficiaries of which consist of all livestock farmers (except for any reasonably excluded for reasons of administrative cost), in such proportions as Meat and Wool New Zealand Limited nominates by notice to the Commissioner of Inland Revenue within 30 days after the date of commencement of this Act; and

(c) if the amount of an allocation of available subscribed capital referred to in paragraph (b) is not valid or an election is not received within the specified time period, the amount is to be treated as available subscribed capital in respect of the classes of shares referred to in paragraph (a) issued on or before the date of commencement of this Act to the trust in the same proportions as the number of shares issued in each class bears to the total number of shares of all classes issued to the trust.

(2) For the purposes of the Income Tax Act 1994, if the Board and Meat and Wool New Zealand Limited at any time cease to both be members of the same consolidated group, an amount of available subscribed capital to which subsection (1) applies, that was not distributed before the date on which the de-consolidation occurred, is cancelled.

87 Consolidation

For the purposes of the Estate and Gift Duties Act 1968 and the Income Tax Act 1994,---

(a) the Board, any subsidiary companies of the Board included in the same wholly-owned group of companies as the Board, and Meat and Wool New Zealand Limited are treated as members of the same consolidated group (within the meaning of the consolidation rules as defined in section OZ 1(1) of the Income Tax Act 1994); and

(b) if section 13(4)(a) or (b) applies, then the membership of the consolidated group formed under paragraph (a) of this section of both the Board and Meat and Wool New Zealand Limited ceases; and

(c) at any time, any of the Board, any subsidiary company of the Board, and Meat and Wool New Zealand Limited may elect to cease membership of the consolidated group.

88 Goods and services tax

For the purposes of the Goods and Services Tax Act 1985, a payment of a grant of money by the Board to Meat and Wool New Zealand Limited is treated as not being consideration in respect of a supply of goods or services by Meat and Wool New Zealand Limited.

89 Definitions

In sections 85 to 88,---

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" and "transaction"

(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, or de facto partner (whether of the same or different sex) 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 involving a meat processor or exporter solely by reason of the director being a supplier of livestock to the processor or exporter in the ordinary course of farming business.

(3) 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.

(4) For the purposes of this clause and clause 10,---

(a) the exercise in relation to any person (or a group of persons including any person) of any of the Board's powers under Part 3 of this Act is a transaction, to which the Board is a party; and

(b) the exercise in relation to any person (or a group of persons including any person) of any power under an allocation mechanism to make a decision or recommendation is a transaction, to which the Board is a party.

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 entered in the interests register and disclosed 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 summary conviction to a fine not exceeding \$10,000.

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.

(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) remuneration or any other benefit given to a director in his or her capacity as a director; or

(b) 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 purpose 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 s 16 Provisions applying to Board and board of directors

Directors

1 Term of office of directors

(1) Except as otherwise provided in this Act---

(a) a director nominated by the industry-good organisation holds office until the sooner of---

(i) the person ceasing to be a director of the industry-good organisation; or

(ii) the close of 31 March in the 3rd year following the year in which the person was nominated as a director of the Board.

(b) a director appointed by the Minister holds office for a term expiring at the close of 31 March in the 3rd year following the year in which the director was appointed or at such earlier date as the Minister specifies at the time of the appointment.

(2) A director may continue in office after the expiry of the term for which the director was nominated or appointed or elected 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).

(3) If a director continues in office for any period after the expiry of the director's term, the successor's term of office is reduced by that period.

(4) Any director may from time to time be re-nominated or reappointed or re-elected.

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 appointed by the Minister dies, or resigns, or is removed from office, the Minister may, after consulting the Board, appoint a director for the residue of the term for which the vacating director was appointed.

(4) If a director nominated by the industry-good organisation dies or resigns or is removed from office, then---

(a) the organisation may nominate another director of the organisation to fill the vacancy (not being a director who has previously been removed from the Board); or

(b) if the organisation informs the Minister that it is unable to nominate a director under paragraph (a), or if it fails to nominate a director within a reasonable period of time, the Minister may, after consulting the industry-good organisation, appoint a person to fill the vacancy for the residue of the term (or what would have been the term, if the director had not died, resigned, or been removed) of the director who died, resigned, or was removed.

(5) The powers of the Board or the board of directors are not affected by any vacancy in the board of directors (but subject to clause 5(3)).

3 Deputies of Minister-appointed directors

(1) If satisfied that a director appointed under section 13(2)(d) is, because of illness, absence, or other sufficient cause, incapable of performing the duties of a director, the Minister may, after consulting the Board where practicable, 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 governing, 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 a majority of directors currently in office.

(4) Subject to subclauses (5) and (6), 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) Any decision relating directly to management of the Board's reserves will not however be treated as valid unless, in addition to being supported by an overall majority of votes, a majority of the farmer-selected directors present (or participating under subclause (7) or subclause (8)) and voting on the resolution concerned also supports the decision.

(6) No decision relating directly to management of the Board's reserves may be taken unless a minimum of 2 farmer-selected directors are present (or participating under subclause (7) or subclause (8)) and voting on the resolution concerned.

(7) A resolution assented to by letter, telegram, telex, fax, 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.

(8) Where---

(a) there is held a telephone or video conference of at least a majority of existing 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.

(9) 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.

(10) In this clause, farmer-selected director means a director---

(a) nominated by the industry-good organisation under section 13(2)(a);
or

(b) nominated by the industry-good organisation under clause 2(4)(a) of this schedule, where the director concerned was elected by livestock farmers as a director of the industry-good organisation; or

(c) elected by livestock farmers to represent them under regulations made under this Act.

6 Chairperson

(1) At its first meeting after the commencement of this Act, and thereafter after the Board's annual general meeting in each year, the board of directors must elect a chairperson from among the directors.

(2) If the chairperson vacates office as chairperson or ceases to be a director, the board of directors must elect from among its members a further chairperson, who holds office until the next election of a 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, the directors present must appoint one of their number to preside at the meeting.

(5) 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.

(6) A chairperson may from time to time be re-elected.

Other matters

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) two or more directors; or

(ii) one or more persons authorised by the Board under clause 8:

(b) an obligation which, if entered into by a natural person, would, by law, be 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 would not, by law, be 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 is, in the absence of proof to the contrary, presumed to be acting in accordance with its terms.

(6) A delegation may be revoked at any time.

(7) The delegation of a power or function 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.

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

10 Remuneration of directors

(1) Subject to subclauses (2) to (5), the Board must pay to each director the remuneration and benefits the Board from time to time determines.

(2) The Board must pay to each director nominated or appointed by the Minister (whether under section 13(2)(d), section 13(6)(c), clause 2(3) or 3(1) of this schedule, or under regulations made under this Act) the remuneration and benefits that the Minister, after having regard to the Government's fees framework and to the level of remuneration and benefits paid to the industry-selected directors, from time to time determines and advises to the Board in writing.

(3) During any financial year to which a resolution under section 59(2) (or, as the case requires, section 59(3)) applies, the Board must not pay to industry-selected 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.

(4) During any financial year after the first year to which a resolution under section 59(2) applies (being a year to which neither a resolution under section 59(2) nor a resolution under section 59(3) applies), the Board must not pay to industry-selected 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 59(2).

(5) During any financial year before the first year to which a resolution under section 59(3) applies, the Board must not---

(a) pay to the chairperson of the Board (if an industry-selected director), for services as chairperson of the Board and a director, remuneration and benefits whose sum is greater than the sum of the remuneration and benefits paid to the chairperson of the former Board during the last complete financial year before the commencement of this Act; or

(b) pay to any other industry-selected director, for services as a director, remuneration and benefits whose sum is greater than the average sum of the remuneration and benefits paid to members (other than the chairperson) of the former Board during the last complete financial year before the commencement of this Act.

(6) In this clause and in section 59, 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 (except for the purposes of subclause (2) of this clause) include the monetary value of---

(i) any insurance of any kind in respect of any of the matters specified in clause 11(1)(a) and (b) provided or paid for the Board; or

(ii) any thing done or payment made by the Board in indemnifying a director in respect of any of the matters specified in clause 11(1)(a) and (b).
Compare: 1997 No 105 s 45

11 Restrictions on indemnity and insurance

(1) Except as provided in clauses 12 to 14, 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.

(2) An indemnification or agreement to indemnify effected or entered into in breach of subclause (1) is void.

(3) If the Board becomes aware that any amount has been paid in breach of subclause (1),---

(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 subclause.

(4) 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.

(5) In this clause and clauses 12 to 14,---
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

indemnify includes relieve or excuse from liability, whether before or after the liability arises

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

official means a 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 a claim

subsidiary of the Board means a 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.

Compare: 1997 No 105 s 46

12 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---

(a) if judgment is given in the official's favour; or

(b) if the official is acquitted; or

(c) if 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 subclause (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 subclause (4).

(4) In relation to any official, the kinds of liability referred to in subclauses (2) and (3) are---

(a) criminal liability arising under New Zealand law:

(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: 1997 No 105 s 47

13 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 arising under New Zealand law) 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 subclause (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 subclause (1) is effected for any director; or

(b) insurance authorised by subclause (1) is effected for any director, but---

(i) subclause (2) has not been complied with; or

(ii) subclause (2) had 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: 1997 No 105 s 48

14 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 arising under New Zealand law) 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) Subclause (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 subclause (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 subclause (1) has been effected without its approval, the Board must immediately cancel the insurance.

Compare: 1997 No 105 s 49

Schedule 3 ss 42(5), 62
Forms of warrant

Form 1

Warrant under section 42(5) of Meat Board
Act 2004 to conduct search in relation to quota compliance audit

To: [person conducting quota compliance audit or member of the police]
Being satisfied on an application in writing made on oath that, as a consequence of the inspection under section 42 of the Meat Board Act 2004 of a place of business, there are reasonable grounds to believe that there is or is likely to be in [describe place] (being a place that is not a place of business)---

(a) any meat product; or

(b) any document relating to any meat product; or

(c) both,---

by this warrant I authorise you, on one occasion within 30 days of the issue of this warrant, to enter that place and inspect any documents relating to meat products, and any meat product.

Dated at thisday of

Conditions (if any) subject to which warrant issued:

.....
District Court Judge (or
Court Registrar (not being
a member of the police)).

Form 2

Warrant under section 62(1) of Meat Board Act 2004 to conduct search, in relation to quota markets, where certain actions suspected

To: [authorised person or member of the police]
Being satisfied on an application in writing made on oath that there are reasonable grounds to believe that---

(a) a person has taken an action of a kind described in paragraph (a) or paragraph (b) of section 34(1) of the Meat Board Act 2004, or is intending to take such an action; and

(b) there is or is likely to be in [describe place] (being a place that is not a place of business)---

(i) any meat product; or

(ii) any document relating to any meat product; or

(iii) both,---

that is evidence that such an action has been taken or is intended to be taken,---

by this warrant I authorise you, on one occasion within 30 days of the issue of this warrant, to enter that place and inspect any documents relating to meat products, and any meat product.

Dated at thisday of

Conditions (if any) subject to which warrant issued:

.....
District Court Judge (or
Court Registrar (not being
a member of the police)).

Form 3

Warrant under section 62(2) of Meat Board Act 2004 to conduct, in relation to quota markets, search arising out of search of business premises

To: [authorised person or member of the police]
Being satisfied on an application in writing made on oath that, as a consequence of the inspection under section 61 of the Meat Board Act 2004 of a place of business, there are reasonable grounds to believe that there is or is likely to be in [describe place] (being a place that is not a place of

business)---

- (a) any meat product; or
- (b) any document relating to any meat product; or
- (c) both,---

by this warrant I authorise you, on one occasion within 30 days of the issue of this warrant, to enter that place and inspect any documents relating to meat products, and any meat product.

Dated at this day of

Conditions (if any) subject to which warrant issued:

.....
District Court Judge (or
Court Registrar (not being
a member of the police)).

Legislative history

- 2 December 2003 Introduction (Bill 94---1)
- 17 February 2004 First reading and referral to Primary Production
Committee
- 27 May 2004 Reported from Primary Production Committee (Bill 94-2)
- 29 June 2004 Second reading, committee of the whole House, third
reading