

MILK AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Milk Act 1967.

Clause 1 relates to the Short Title.

Clause 2 amends section 25 of the principal Act so as to enable Orders in Council made under subsection (6) of that section to provide for the withholding or reduction of any price, margin, or allowance that would otherwise be allowed to any person for the collection, treatment, storage, distribution, delivery, or sale of milk, where that person has not performed the activity concerned satisfactorily.

Clause 3 amends section 31 of the principal Act by increasing the maximum rate of the levy on milk from 0.25 cents per litre to 0.4 cents per litre for milk and from 2.5 cents per litre to 4 cents per litre for cream.

Clause 4 inserts into the principal Act new sections relating to a Milk Inquiries Appeal Authority.

New section 57A establishes the authority. The members are to be appointed by the Governor-General on the recommendation of the Minister, and in the case of the Chairman that recommendation shall be made only after consultation with the Minister of Justice. The Chairman is to be a barrister or solicitor of the Supreme Court of at least 7 years practice and he must not in any way have been connected with the town milk supply industry. The other two members are to be persons with knowledge of and experience in the town milk industry. Each member is to be appointed for a term of 3 years but may from time to time be reappointed. The section also contains the usual provisions relating to extraordinary vacancies and the appointment of temporary members to act in the place of members who are temporarily unable to act themselves.

New section 57B provides that the authority is to be serviced by the Department of Justice.

New section 57C relates to the lodging of appeals against decisions of committees appointed under section 57 of the principal Act. Any person aggrieved by such a decision may appeal within 21 days, or such longer period as the authority may allow, after the date on which the decision was made. Notice of appeal is to be lodged in duplicate and copies are to be served on the Milk Board and every other party to the inquiry concerned. The Board and every

such party may appear and be heard as a party to the appeal. When such a notice of appeal has been lodged, the Board is required to send to the authority all relevant documents and exhibits held by it, a copy of the notes made by or at the direction of that committee, and a copy of the decision of the committee. Provision is also made for the forwarding by the Board to the authority of a report specifying the considerations to which the committee had regard when making the decision and any other matters relevant to the decision or to the general administration of the principal Act to which the Board wishes to draw the attention of the authority. Where such a report is sent to the authority, copies are to be given to every party to the appeal and any such party may be heard and tender evidence on any matter referred to in the report.

New section 57D provides that appeals are to be by way of rehearing. Exhibits that were before the committee are to be brought forward for consideration by the authority, and copies of the committee's note of oral evidence and of written statements read by witnesses while under oath are also to be produced. The authority is also given power to rehear the whole or any part of the evidence before the committee and is required to rehear the evidence of any witness if it has reason to believe that the written notes of that evidence are in any way incomplete. Further evidence may also be heard at the discretion of the authority. The authority is to have regard to any report lodged under *section 57C*, together with matters referred to in it and evidence tendered on it; and may generally receive as evidence anything that the committee could have received.

New section 57E provides that the authority, on hearing an appeal, may affirm the decision of the committee or substitute for it any other decision that the committee could have made. Subject to the authority's power to state a case for the Administrative Division of the Supreme Court, every decision of the authority is to be final and binding on the parties to the appeal concerned.

New section 57F authorises the authority to state a case for the opinion of the Administrative Division of the Supreme Court on any question of law arising in any matter before it.

New Section 57G provides that the authority is to be deemed to be a Commission of Inquiry.

Section 57 of the principal Act is consequentially amended to provide that the final and binding nature of the decision of any committee is to be subject to the right of appeal created by this Bill, and to require every committee to keep notes of the evidence given at the hearing of inquiries conducted by it and to give all its decisions in writing together with written reasons for them.

Hon. Mr Bolger

MILK AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	"57c. Appeal
2. Fixing prices and conditions for sale of milk	"57d. Hearing of appeal
3. Levy on milk	"57e. Powers of authority on hearing of appeal
4. Milk Inquiries Appeal Authority	"57f. Case may be stated for Administrative Division of Supreme Court
" <i>Appeals in respect of local inquiries</i> "	"57g. Authority to be Commission of Inquiry
"57b. Administrative and secretarial services	

A BILL INTITULED

An Act to amend the Milk Act 1967

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title and commencement**—This Act may be cited as the Milk Amendment Act 1977 and shall be read together with and deemed part of the Milk Act 1967* (hereinafter referred to as the principal Act).

10 2. **Fixing prices and conditions for sale of milk**—Section 25 of the principal Act is hereby amended by inserting, after subsection (6), the following subsection:

15 "(6A) An Order in Council made under subsection (6) of this section may provide for the withholding or reduction of any price, margin, or allowance, that would otherwise be allowed to any person by a notice under this section, by reason of the failure of that person—

"(a) To perform the service in respect of which the price, margin, or allowance is claimed; or

*1967, No. 54

Amendments: 1971, No. 75; 1973, No. 75

- “(b) To perform the service in respect of which the price, margin, or allowance is claimed in compliance with any condition or requirement imposed by—
- “(i) Any enactment; or
- “(ii) Any person authorised by any enactment to impose any condition or requirement in that behalf; or
- “(c) To obtain the prior authority of the Board to perform the service in respect of which the price, margin, or allowance is claimed; or
- “(d) To comply with all the conditions subject to which any consent or approval of the Board to the performance of the service in respect of which the price, margin, or allowance is claimed was given.

3. Levy on milk—(1) Section 31 of the principal Act is hereby amended by repealing subsection (3) (as substituted by section 2 of the Milk Amendment Act 1973), and substituting the following subsection:

 “(3) The rate of the levy shall not exceed 0.4 cents per litre for milk or 4 cents per litre for cream.”

(2) Section 2 of the Milk Amendment Act 1973 is hereby consequentially repealed.

4. Milk Inquiries Appeal Authority—(1) The principal Act is hereby further amended by inserting, after section 57, the following heading and sections:

“Appeals in respect of local inquiries

“57A. (1) For the purpose of hearing appeals under section 57C of this Act, there is hereby established an authority (in this section and sections 57D to 57G of this Act referred to as the authority) to be called Milk Inquiries Appeal Authority.

“(2) The members of the authority shall be appointed by the Governor-General on the recommendation of the Minister (in the case of the Chairman, made after consultation with the Minister of Justice), and shall comprise—

- “(a) A Chairman, who shall be a barrister or solicitor of the Supreme Court of not less than 7 years’ practice, whether or not he holds or has held any judicial office, who is not, and has never in any way been, connected with the town milk supply industry; and

“(b) Two persons with knowledge of and experience in the town milk industry.

“(3) The Chairman of the authority may hold that office concurrently with any other office.

5 “(4) Subject to subsection (5) of this section, every member of the authority shall be appointed for a term of 3 years but may from time to time be reappointed.

10 “(5) Any member of the authority may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, and may at any time resign his office by notice in writing addressed to the Minister.

15 “(6) If any member of the authority dies, or resigns, or is removed from office, the vacancy thereby created shall be filled in the same manner as the appointment of the vacating member; and a person appointed to fill any such vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

20 “(7) Where the Governor-General is satisfied that any member of the authority is, through illness, absence, or other sufficient reason unable to exercise the power and duties of his office—

25 “(a) A person with the qualifications of that member may be appointed, in the same manner as that member was appointed, to act in place of that member:

“(b) Until the inability ceases, the person appointed to act in the place of that member shall be deemed to be a member of the authority:

30 “(c) No action of the authority shall in any proceedings be questioned on the ground that the occasion for the appointment of a person to act in place of a member of the authority has not arisen or had ceased.

35 “(8) The authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

40 “(9) There shall be paid to the Chairman and members of the authority, out of money appropriated by Parliament for the purpose, remuneration by way of fees and allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly.

“57B. **Administrative and secretarial services**—The Department of Justice shall provide for the authority such administrative and secretarial services as may be necessary to enable it to exercise its functions and powers, and perform its duties, under this Act.

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“57C. **Appeals**—(1) Any person aggrieved by a decision of a committee appointed under section 57 of this Act may, within 21 days or such longer period as the authority may allow after the date on which the decision was made, lodge with the authority a notice in duplicate of his intention to appeal against it, stating with particularity the grounds of the appeal and the relief sought.

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“(2) A copy of the notice shall be served on the Board and every other party to the inquiry in respect of which the appeal is lodged; and the Board and every such party may appear and be heard as a party to the appeal.

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“(3) As soon as possible after the receipt of a copy of a notice of appeal, the Board shall cause to be sent to the authority—

“(a) All relevant applications, documents, written submissions, statements, reports, and other papers lodged with the committee concerned:

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“(b) A copy of the notes made by or at the direction of that committee concerning that inquiry:

“(c) All exhibits relating to the inquiry concerned that are in the custody of the Board:

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“(d) A copy of the decision of the committee relating to that inquiry.

“(4) The Board may also, if it thinks fit, and shall, if so directed by the authority, cause to be sent to the authority a report specifying the considerations to which the committee concerned had regard in making the decision, including any material indicating the effect that the decision might have on the general administration of this Act, and any other matters relevant to the decision or to the general administration of this Act to which it wishes to draw the attention of the authority.

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“(5) Where a report is sent to the authority under subsection (4) of this section or this subsection, the authority may direct that a further report be so sent.

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“(6) A copy of every report sent to the authority under subsection (4) or subsection (5) of this section shall be given or sent forthwith to every party to the appeal; and any such party shall be entitled to be heard and tender
5 evidence on any matter referred to in the report.

“57D. **Hearing of appeal**—(1) Every appeal shall be by way of rehearing; but where any question of fact is involved in an appeal, the evidence taken before the committee concerned bearing on that question shall, subject to any
10 direction of the authority, be brought before the tribunal as follows:

“(a) As to any evidence given orally, by the production of a copy of the committee’s note, or of a written statement read by a witness while under oath, or
15 of such other materials as the authority thinks expedient:

“(b) As to any exhibits, by the production of such of the exhibits as may have been forwarded to the authority by the Board, and by the production by
20 the parties to the appeal of such exhibits as are in their custody.

“(2) Notwithstanding anything in subsection (1) of this section, the authority may rehear the whole or any part of the evidence, and shall rehear the evidence of any witness
25 if the authority has reason to believe that any note of the evidence of that witness made by the committee is or may be incomplete in any material particular.

“(3) The authority shall have full discretionary power to hear and receive further evidence on questions of fact
30 either by oral evidence or by affidavit.

“(4) The authority shall also have regard to any report lodged by the Board under section 57c of this Act and to any matters referred to therein and to any evidence tendered thereon, whether or not such matters would be otherwise
35 admissible in evidence.

“(5) In the exercise of its powers under this section the authority may receive as evidence any statement, document, information, or matter that the committee would have been entitled to receive at the inquiry in respect of which the
40 appeal has been lodged.

“57E. **Powers of authority on hearing of appeal**—The authority may, on hearing an appeal, either affirm the decision of the committee concerned or substitute for it any other decision that the committee could have made; and, subject to section 57F of this Act, that decision shall be final and binding on the parties to the appeal and shall be notified to them and to the Board. 5

“57F. **Case may be stated for Administrative Division of Supreme Court**—The authority may, on the application of any party to any appeal, or of its own motion, state a case for the opinion of the Supreme Court on any question of law arising in any matter before the authority; and every such case stated shall be heard and determined by the Administrative Division of the Court. 10

“57G. **Authority to be Commission of Inquiry**—For the purposes of enabling the authority to conduct and dispose of appeals under this Act, the authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and the provisions of that Act shall apply accordingly.” 15 20

(2) Section 57 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:

“(6) Where a committee appointed under this section conducts any inquiry into any dispute or difference referred to the Board under subsection (1) of this section, it shall determine that dispute or difference. 25

“(6A) Subject to sections 57A to 57G of this Act, the decision of a committee appointed under this section shall be final and binding on the parties to it, and shall be notified to them and to the Board.” 30

(3) The said section 57 is hereby consequentially amended by adding the following subsection:

“(10) The committee concerned shall cause to be made notes of the evidence given at the hearing of every inquiry held under this section; and every decision made by it shall be in writing and accompanied by written reasons.” 35