

[AS REPORTED FROM THE LANDS AND AGRICULTURE
COMMITTEE]

House of Representatives, 8 September 1978.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

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) 1978 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

No. 172—2

- “(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 5
- “(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 10
- “(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: 15

“(3) The rate of the levy shall not exceed 0.4 cents per litre for milk or 4 cents per litre for cream.” 20

(2) Section 2 of the Milk Amendment Act 1973 is hereby consequentially repealed.

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4. Milk Inquiries Appeal Authority—(1) The principal Act is hereby further amended by inserting, after section 57, the following heading and sections: 25

“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. 30

“(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— 35

“(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; 40
and

Struck Out

- “(b) Two persons with knowledge of and experience in the town milk industry.
- 5 “(3) The Chairman of the authority may hold that office concurrently with any other office.
- “(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.

Struck Out

“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. 5

“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 10 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.

“(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. 15

“(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— 20

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

“(b) A copy of the notes made by or at the direction of that committee concerning that inquiry: 25

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

“(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 30 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 35 matters relevant to the decision or to the general administration of this Act to which it wishes to draw the attention of the authority.

“(5) Where a report is sent to the authority under subsection (4) of this section or this subsection, the authority 40 may direct that a further report be so sent.

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5 “(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 evidence on any matter referred to in the report.

10 “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 direction of the authority, be brought before the tribunal as follows:

15 “(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 of such other materials as the authority thinks expedient:

20 “(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 the parties to the appeal of such exhibits as are in their custody.

25 “(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 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.

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

35 “(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 admissible in evidence.

40 “(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 appeal has been lodged.

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“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 15

“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.” 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

New

4. **New Provisions inserted**—(1) The principal Act is hereby further amended by inserting, after section 57, the following heading and sections:

5

“Appeals

“57A. **Milk Appeal Authority**—(1) For the purpose of hearing appeals under section 57c of this Act, there is hereby established the Milk Appeal Authority.

“(2) The members of the appeal 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—

15 “(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 financially interested in the town milk industry otherwise than as a ratepayer or a member of the public:

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

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

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

30 “(5) Any member of the appeal 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.

35 “(6) If any member of the appeal 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.

New

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

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“(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 appeal authority: 10

“(c) No action of the appeal 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 appeal authority has not arisen or had ceased. 15

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

“(9) There shall be paid to the Chairman and members of the appeal 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. 25

“57B. **Administrative and secretarial services**—The Department of Justice shall provide for the appeal 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. 30

“57C. **Rights of appeal**—(1) Any person aggrieved by a decision—

“(a) By the Board to refuse to grant an approval under section 17 of this Act, or to revoke, vary, suspend, or refuse to renew any such approval; or 35

“(b) By the Board to attach to an approval under section 17 of this Act terms or conditions that unduly restrict the operations of the milk vendor concerned; or

“(c) By the Board fixing an amount required to be paid to it by a milk vendor under section 18 (2) of this Act; or 40

New

- 5 “(d) By the Board granting a temporary approval under section 20 of this Act in respect of an area for which a milk vendor has already been approved under section 17 of this Act; or
- “(e) By the Board refusing to grant, granting subject to any condition, adding or varying any condition to, or revoking, a consent granted or deemed to have been granted under section 24 of this Act; or
- 10 “(f) By a committee appointed under section 57 (3) of this Act resulting from an inquiry into a dispute or difference referred to the Board under section 57 (1) of this Act—

15 may, within 28 days after the date on which the decision was made, lodge with the appeal authority a notice in duplicate of his intention to appeal against it, stating with particularity the grounds of appeal and the relief sought:

20 “Provided that no appeal shall lie against a decision of the Board to refuse to grant an approval under section 17 of this Act where the Board states that its grounds for doing so are that there are already sufficient approved milk vendors to meet adequately the needs of the milk district or portion thereof where the applicant proposes to operate.

25 “(2) A copy of the notice shall be served on the Board and, in the case of an appeal under subsection (1) (f) of this section, on every other party to the inquiry concerned; and the Board and every such party may appear and be heard as parties to the appeal.

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

35 “(4) Where a report is sent to the appeal authority under subsection (3) of this section or under this subsection, the appeal authority may direct that a further report be so sent relating to any particular matter; and in that case the Board shall send a further report accordingly.

New

“(5) A copy of every report sent to the appeal authority under subsection (3) or subsection (4) of this section shall be given or sent forthwith by the Board to every party to the appeal; and every such party shall be entitled to be heard and tender evidence on any matter referred to in the report. 5

“57CA. Documents, etc., to be sent to appeal authority—
 (1) As soon as possible after receiving a copy of a notice of appeal under paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) or paragraph (e) of section 57c (1) of this Act, the Board shall cause to be sent to the appeal authority all applications, documents, written submissions, reports, and other papers, and all exhibits, that are in its possession or control and are relevant to the appeal. 10

“(2) As soon as possible after receiving a copy of a notice of appeal under section 57c (1) (f) of this Act, the Board shall cause to be sent to the appeal authority— 15

“(a) All relevant applications, documents, written submissions, statements, reports, and other papers, lodged with the committee concerned: 20

“(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:

“(d) A copy of the decision of the committee relating to that inquiry.” 25

“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 Board or, as the case may be, the committee concerned bearing on that question shall, subject to any direction of the appeal authority, be brought before it as follows: 30

“(a) As to any evidence given orally, by the production of a copy of the Board’s or committee’s note, or of a written statement read by a witness while under oath, or of such other materials as the appeal authority thinks expedient: 35

“(b) As to any exhibits, by the production of such of the exhibits as may have been forwarded to the appeal authority by the Board, and by the production by the parties to the appeal of such exhibits as are in their custody. 40

New

“(2) Notwithstanding anything in subsection (1) of this section, the appeal authority may, in its discretion, rehear the whole or any part of the evidence.

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

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

“(5) In the exercise of its powers under this section in relation to an appeal under section 57c (1) (f) of this Act,
15 the appeal 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 appeal has been lodged.

“57E. Powers of appeal authority on hearing of appeal—

20 (1) The appeal authority may, on hearing an appeal, either affirm the decision of the Board or the committee concerned or substitute for it any other decision that the Board or committee could have made; and, subject to section 57F of this Act, that decision shall be final and binding on all
25 persons.

“(2) The appeal authority shall notify every decision made by it to the parties to the appeal and to the Board.

“57F. Case may be stated for Administrative Division of Supreme Court—The appeal authority may, on the applica-
30 tion 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 appeal authority; and every such case stated shall be heard and determined by the Administrative Division of the Court.

35 “57G. Appeal authority to be Commission of Inquiry—For the purposes of enabling the appeal authority to conduct and dispose of appeals under this Act, the appeal authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and the provisions of that
40 Act shall apply accordingly.

New

“57H. Status of decisions pending determination of appeals—(1) A decision of the Board to revoke or refuse to renew an approval under section 17 of this Act relating to any milk vendor shall, where that vendor or his personal representative so agree in writing, have effect on such date (on or after the date on which it is made) as the Board decides. 5

“(2) Subject to subsection (1) of this section, a decision of the Board to revoke, suspend, or refuse to renew, an approval under section 17 of this Act shall be deemed to be suspended until the expiration of 28 days from the date on which it was made. 10

“(3) Except as provided in subsection (2) of this section:

“(a) Every decision of the Board or a committee in respect of which a right of appeal is given by section 57c of this Act, shall, notwithstanding that right, have full effect until it is reversed or modified on appeal; and 15

“(b) The fact that an appeal is pending shall not operate as a stay in respect of any such decision.” 20

(2) Section 2 of the principal Act is hereby consequentially amended by inserting, before the definition of the term “Authority”, the following definition:

“‘Appeal authority’ means the Milk Appeal Authority established by section 57A (1) of this Act.”. 25

(3) 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. 30

“(6A) Subject to sections 57A to 57H 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.” 35

(4) Section 26 of the principal Act and section 6 of the Milk Amendment Act 1971 are hereby consequentially repealed. 40

(5) Notwithstanding the repeals effected by subsection (4) of this section, every appeal notice of which was given under section 26 of the principal Act before the commencement of this Act shall be dealt with and disposed of as if this Act had not been passed. 45