

Dairy Industry Restructuring Amendment Bill (No 3)

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Dairy Industry Restructuring Amendment Bill (No 3) and recommends that it be passed with the amendments shown.

Background

Nineteen years ago, the Dairy Industry Restructuring Act 2001 (DIRA) enabled two New Zealand milk co-operatives to merge into one new organisation, Fonterra Co-operative Group Limited. Fonterra had a near-monopoly in the New Zealand farm gate market for milk (milk that is purchased direct from farmers). There was a risk that, in the absence of competition, the newly formed company would not achieve the efficiencies intended by the merger. Part 2, subparts 5 and, later, 5A of the DIRA were enacted to manage this risk and impose performance pressure on the company in the absence of direct competition. The DIRA also included provisions to support competition in the farm gate market and to protect the interests of New Zealand consumers.

The DIRA's open entry and exit provisions allow farmers to start and stop supplying milk to Fonterra without any penalties. These requirements were intended to incentivise Fonterra to manage its milk supply and investment in capacity by setting an efficient milk price.

Since the DIRA came into force, Fonterra's market share has decreased somewhat and milk supply has increased significantly. In 2001, Fonterra's market share was 96 percent (about 12.5 billion litres of milk out of a total of 13 billion litres produced in New Zealand). In 2019, its market share was 81 percent (about 17 billion litres out of 21 billion).

The bill as introduced

The bill is largely focused on amending Part 2, subparts 5 and 5A of the DIRA. It follows a review that looked at how well the DIRA's regulatory system is working in light of changes in the dairy industry. The changes proposed in the bill seek to maintain regulatory disciplines on Fonterra's activities and enhance aspects of the dairy industry's performance.

Reduced obligation to accept new milk

Clause 22, new sections 96A and 96H would allow Fonterra to refuse to accept milk from newly converted dairy farms and from farmers who would not be able to meet Fonterra's terms of supply such as environmental, employment, or other standards.

Reduced obligation to sell milk to other processors

Clause 34 and Schedule 2 would reduce Fonterra's obligation to sell raw milk to other processors. The obligation would cease when another processor had secured its own supply of 30 million litres or more for a single season, rather than for three consecutive seasons, as at present. This change would come into effect from 1 June 2023.

Milk price

Clause 23 would amend section 106 to allow Fonterra to pay different prices for milk on the basis of matters set out in Fonterra's terms of supply, such as a farm's measures to protect the environment, animal welfare, and health and safety, subject to the existing requirement that Fonterra not discriminate between suppliers in similar circumstances.

Clause 29 would amend section 150C to limit Fonterra's discretion in how it calculates the base milk price. It would embed Fonterra's current (capital asset pricing) methodology, which requires an "asset beta" estimate that would have to be consistent with those of other dairy and commodity processors. ("Asset betas" are used in forecasting economic risk.) Clause 29 would also insert a definition of "asset beta" into section 150C.

Other proposals in the bill

Clause 27 would require a review of the DIRA every four to six years.

Clause 30 would require one member (out of five) of the Milk Price Panel to be appointed on the Minister's recommendation.

The bill would also update the regulated terms on which Goodman Fielder New Zealand Limited (the only other large scale supplier of staple dairy products to the New Zealand domestic consumer market) can purchase raw milk from Fonterra. The terms are a regulatory backstop to the current contract between Fonterra and Goodman Fielder. It would increase the volume of milk that Goodman Fielder may buy from Fonterra from 250 million to 350 million litres. This is to reflect growth in domestic consumption.

The bill would also change the current price formula to compensate Fonterra for the cost of off-peak supply to Goodman Fielder and enable Goodman Fielder to purchase regulated milk from Fonterra at fixed quarterly prices. This would align the terms and conditions available to Goodman Fielder with those of other domestically focused dairy processors purchasing regulated milk from Fonterra.

New Zealand Dairy Core Database

The bill also seeks to amend Part 2, subpart 4 of the DIRA, to update it and recognise changes to the management of the New Zealand Dairy Core Database. This matter is unrelated to the regulation of Fonterra in Part 2, subparts 5 and 5A, and the amendments are of a technical nature.

Our proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Repeal open entry for returning farmers

In our view, it is time to remove the open entry requirements which require Fonterra to buy milk from any farmer who wishes to supply it. We believe that the cost of open entry on Fonterra is too high.

We heard many submitters talk about the importance of loyalty. They believe that the right for farmers to return to Fonterra once they have left should be removed.

The main purposes of the open entry and exit provisions are to incentivise Fonterra to set an efficient price for farmers' milk and to encourage competition between processors by allowing farmers to choose whether to sell milk to Fonterra, the biggest player in the market. Now that other large processors have established themselves as credible options in several regions, it is time to remove some of the extra burden that was placed on Fonterra.

We consider that open exit should be retained: farmers should be able to stop supplying their milk to Fonterra without any penalties. Retaining open exit would allow continued contestability in the market for farmers' milk.

The bill would remove open entry for new dairy conversions and for farmers who would not be able to comply with Fonterra's terms of supply. We propose to extend this by removing the right of any farmer to become a Fonterra shareholder, with the exception of new farmers as discussed below. This would remove the right of open re-entry for farmers who have left Fonterra. As discussed below, we consider that new farmers should still have the benefit of open entry. We recommend inserting several clauses to remove open re-entry for these farmers, including:

- 19A to amend the statement of principles in section 71
- 19B to amend the overview in section 72
- 20A to change the cross-heading above section 73

- 20B to replace section 73, setting out in new subsection (3) the discretion as to whether to accept an application to supply milk.

Retain open entry for new farmers

We recommend keeping open entry for new farmers because we believe that it is important to encourage new generations of farmers. New farmers should be free to start supplying Fonterra under the same terms and conditions as apply to existing suppliers.

The new farm should be beneficially owned (more than 50 percent) by a person who has never before been the beneficial owner of a supplier of milk to a processor. The farm should be producing less than 300,000 kg of milk solids. Also, sharemilkers and contract milkers should be allowed open entry when they progress to being suppliers in their own right.

Our proposed new clause 20B would replace section 73 of the DIRA, which requires Fonterra to accept applications to supply milk. The committee is cognisant that this provision is not one that has had the opportunity of full consideration by the sector. This clause needs to be discussed and further refined taking into account sector views. Because of this, we are taking the unusual step of recommending a placeholder provision in our proposed new section 73(1). We expect the House to amend new section 73(1) to reflect the exceptions to the removal of open entry that we discuss in this commentary.

We recommend that the House amend our new section 73(1) to require Fonterra only to accept applications from new entrants:

- who have never supplied milk to Fonterra or another processor (including through an entity in which they were the beneficial owner) and have more than a 50 percent beneficial interest in their farm, and
- whose application is for less than 300,000 kg of milk solids.

The House's amendment to new section 73(1) should retain open entry for those who may have previously supplied milk as a sharemilker or contract milker.

We note that the House may see fit to amend the bill to allow regulations to be made adjusting the provisions about new entrants if required in the future. This flexibility would allow changes to be made if considered appropriate to encourage and support the next generation of farmers.

We believe that our proposal would provide certainty and stability in the industry until the next review of the Act in four to six years, as provided for in the bill.

Commencement date

Farmers and processors should be able to plan for the removal of open entry. Accordingly, we recommend inserting subclause (1) into clause 2 to specify a commencement date of 1 June 2022 for these provisions. We note that farmers wishing to return to Fonterra would have to decide to do so about 6 months before then: in December 2021.

We note that clause 20, amending section 73, would come into force in June 2020 (under clause 2(3)). After clause 20B came into force in June 2022, section 73 as amended by clause 20 would be replaced by new section 73 as inserted by clause 20B.

Commencement of new definition of “own supply”

Schedule 2, Part 3 would expand the definition of “own supply” in the Dairy Industry Restructuring (Raw Milk) Regulations 2012 to include milk sourced from wholesale markets (such as other processors or brokers, rather than just farmers).

The timing of this provision should be aligned with that proposed in new regulation 6(3) (which would make large dairy processors eligible to access Fonterra’s milk for one season only, instead of the current three). We recommend inserting subclause (2) into clause 2 of the bill to provide for the new definition of “own supply” to commence on 1 July 2023.

Clearer definition of “new collection point”

We recommend amending clause 22, new section 96B to make the definition of “new collection point” clearer. To avoid confusion, we also recommend removing the fourth example of a new collection point.

Definition of “production land”

Clause 22 would remove open entry for milk from new collection points where at least half the land used to produce the milk is new production land. Under new section 96B, “production land” includes land used to produce crops that are later fed to dairy cows.

This definition is too wide. Land that has never been used to graze dairy cows should not be considered “production land”. Fonterra should not have to accept milk from a new collection point where the land was used to grow crops that fed cows. We therefore recommend removing the references to feed and feeding in the definition of “production land” in clause 22, new section 96B.

Farm gate milk price

Clause 28 would amend section 150A to make it clear that Fonterra’s farm gate milk price may differ from the base milk price.

We gathered from submissions that the terms base milk price and farm gate milk price are often used interchangeably. Some people were not aware that the base milk price is a notional benchmark and a reference point for farmers to assess Fonterra’s performance. We believe the distinction between the two prices needs to be made clearer.

We recommend moving this provision from clause 28 into our new clause 29A, new section 150CA(1). We also recommend inserting new section 150CA(2) to require Fonterra to:

- publish the base milk price and the farm gate price each season

- explain why the prices differ or do not differ from each other.

Appendix

Committee process

The Dairy Industry Restructuring Amendment Bill (No 3) was referred to the committee on 27 August 2019. The closing date for submissions was 9 October 2019. We received and considered 86 submissions from interested groups and individuals. We heard oral evidence from 28 submitters at hearings in Wellington.

We received advice from the Ministry for Primary Industries.

Committee membership

David Bennett (Chairperson)

Hon Amy Adams

Kiritapu Allan

Kieran McAnulty

Todd Muller

Mark Patterson

Rino Tirikatene

Hamish Walker

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Damien O'Connor

Dairy Industry Restructuring Amendment Bill (No 3)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Dairy Industry Restructuring Amendment Act **(No 3) 2019**.

2 Commencement

~~This Act comes into force on 1 June 2020.~~

- (1) **Sections 19A, 19B, 20A, 20B, 20C, 20D, 21, 23A, and 23B** come into force on **1 June 2022**.
- (2) So much of **Part 3 of Schedule 2** as relates to the definition of **own supply** in regulation 3 of the Dairy Industry Restructuring (Raw Milk) Regulations 2012 comes into force on 1 July 2023. 5
- (3) The rest of this Act comes into force on 1 June 2020.

3 Principal Act

This Act amends the Dairy Industry Restructuring Act 2001 (the **principal Act**). 10

Part 1

Main amendments to principal Act

4 Section 4 amended (Purpose)

Replace section 4(e) with: 15

- (e) provide for the regulation of matters relating to the core database, including its management; and

5 Section 5 amended (Interpretation)

- (1) In section 5(1), insert in their appropriate alphabetical order:

Access Panel means the Access Panel established by regulations made under section 63 20

constitution means,—

- (a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, the constitution of the company; and
- (b) in the case of any other entity, the documents or instruments that form the constitution of the entity 25

entity means any of the following:

- (a) a company or other body corporate;
- (b) a corporation sole;
- (c) in the case of a trust that has— 30
 - (i) only 1 trustee, the trustee acting in their capacity as trustee;
 - (ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees;
- (d) an unincorporated body (including a partnership)

farm gate milk price means the total cost of milk divided by kilograms of milk solids	
government agency means an agency of the Crown, whether a department, a corporation, a Crown entity, a Crown Research Institute, or another organisation or instrument	5
intended manager , in relation to the core database, means an entity named as the intended manager of the core database by regulations made under section 65B	
kilograms of milk solids means the number of kilograms of milk solids supplied to new co-op in a season by shareholding farmers	10
manager of the core database means—	
(a) DairyNZ Limited; or	
(b) an entity appointed by regulations made under section 65A , if regulations have been made under that section; or	
(c) the Crown, if the management of the core database has reverted to the Crown under section 68 (and no entity has been appointed by regulations made under section 65A)	15
organic milk means raw milk certified as organic milk by a certifying entity or person prescribed by regulations made under section 115	
previous manager , in relation to the core database, means an entity (or the Crown) replaced as manager of the core database by regulations made under section 65A	20
raw milk —	
(a) means untreated milk from a cow; and	
(b) includes <u>untreated</u> organic milk; and	25
(c) includes any other milk of a kind that is not excluded by paragraph (d) and is prescribed by regulations made under section 115; but	
(d) does not include—	
(i) milk or a component of milk from a cow if the milk or component is produced under special conditions by, for example, the use of specialised herd selection, specialised farming practice, specialised feeding practice, or new technology; or	30
(ii) colostrum	
total cost of milk means the total calculated by—	
(a) getting a sum by adding together all payments to which all the following apply:	35
(i) the payment is made by new co-op and any body that is an interconnected body of new co-op; and	
(ii) the payment is made to a shareholding farmer; and	

- (iii) the payment is for the raw milk that the farmer supplies to new co-op in a season; and
- (b) deducting from the sum—
- (i) the total organic milk premium for the season; and
- (ii) the total winter milk premium for the season 5
- total organic milk premium** means the total premium paid to shareholding farmers for the supply of organic milk to new co-op and any body that is an interconnected body of new co-op in a season
- total winter milk premium** means the total premium paid to shareholding farmers for the supply of winter milk to new co-op and any body that is an interconnected body of new co-op in a season 10
- winter milk** means raw milk supplied in June or July, and in any other period prescribed by regulations made under section 115
- (2) In section 5(1), replace the definition of **core database** with:
- core database** means the database that comprises— 15
- (a) information provided to the manager of the core database under—
- (i) the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations; or
- (ii) any regulations made under section 62; and
- (b) information provided to a previous manager under any of the things referred to in **paragraph (a)** while it was the manager of the core database; and 20
- (c) information provided to a previous manager or an intended manager under regulations made under **section 65C**
- (3) In section 5(1), repeal the definition of **panel** that relates to the panel established under regulations made under section 63. 25
- (4) In section 5(1), repeal the definitions of **qualifying company** and **qualifying products or services**.
- 6 New sections 5A and 5B inserted** 30
- After section 5, insert:
- 5A Status of examples**
- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails. 35

5B	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.	
7	Subpart 4 heading in Part 2 replaced	
	In Part 2, replace the subpart 4 heading with:	5
	Subpart 4—Management of core database	
8	Section 43 amended (Overview)	
	Replace section 43(1) and (2) with:	
(1)	Section 43A states that the constitution of the manager of the core database must be read as requiring the manager to retain the core database.	10
(2)	Sections 62 to 65D contain regulation-making powers relating to—	
	(a) herd testing:	
	(b) the provision of information to the core database:	
	(c) access to the core database:	
	(d) disclosure of information by the manager of the core database:	15
	(e) the appointment of the manager of the core database and the naming of an intended manager:	
	(f) the regulation of a previous manager or an intended manager of the core database.	
9	Cross-heading after section 43 repealed	20
	Repeal the cross-heading after section 43.	
10	New section 43A inserted (Manager of core database must retain database)	
	After section 43, insert:	
43A	Manager of core database must retain database	25
(1)	The constitution of the manager of the core database must be read as requiring the manager to retain the core database.	
(2)	Subsection (1) does not apply if—	
	(a) the Minister and the manager of the core database agree in writing that the subsection no longer applies; or	30
	(b) the manager of the core database is the Crown.	
11	Section 61 and cross-heading above section 61 repealed	
	Repeal section 61 and the cross-heading above section 61.	

12	Section 62 amended (Regulations relating to herd testing and provision of information to core database)	
(1)	In section 62(e), replace “LIC for entering into the core database” with “the manager of the core database for entering into the core database”.	
(2)	In section 62(f), replace “LIC” with “the manager of the core database”.	5
13	Section 63 amended (Regulations relating to access to core database)	
(1)	In section 63(1)(a), (b)(ii), (c), (h), and (j) and (5), replace “LIC” with “the manager of the core database” in each place.	
(2)	In section 63(1)(g), replace “LIC’s” with “the manager of the core database’s”.	
(3)	In section 63(4), replace “LIC” with “The manager of the core database”.	10
14	Section 64 amended (General regulations relating to herd testing and core database)	
(1)	In section 64(a)(i), replace “LIC” with “the manager of the core database”.	
(2)	In section 64(b), replace “LIC’s” with “the manager of the core database’s”.	
15	Section 65 amended (Regulations requiring disclosure of information by LIC)	15
(1)	In the heading to section 65, replace “LIC” with “ manager of core database ”.	
(2)	In section 65(a), replace “LIC” with “the manager of the core database”.	
(3)	In section 65(a)(i) and (ii), replace “LIC’s” with “the manager’s”.	
16	Section 65A replaced (Regulations relating to dairy industry entity other than LIC)	20
	Replace section 65A with:	
65A	Regulations appointing manager of core database	
(1)	The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations appointing an entity to manage the core database.	25
(2)	The Minister may make the recommendation only if—	
(a)	the core database reverts to the Crown under section 68 ; or	
(b)	the existing manager of the core database asks the Minister in writing to make the recommendation; or	30
(c)	the existing manager has changed, or the Minister considers it likely that the existing manager will change, its constitution in a way that the Minister considers may compromise its suitability as manager of the core database; or	
(d)	the Minister considers that the existing manager has failed, or is at risk of failing, to—	35

- (i) comply with this Act or any regulations made under sections 62 to 65; or
- (ii) manage the core database in a way that the Minister considers satisfactory.
- (3) The Minister must,— 5
- (a) before making a recommendation under **subsection (2)(c)**, consult the existing manager:
- (b) before making a recommendation under **subsection (2)(d)(ii)**, give the existing manager a reasonable opportunity to manage the database in a way that the Minister considers satisfactory. 10
- (4) An appointment under **subsection (1)** takes effect on a date specified in the regulations.
- (5) The appointment of an existing manager ends when an appointment under **subsection (1)** takes effect.
- (6) A failure to comply with **subsection (3)** does not affect the validity of regulations made under this section. 15
- 65B Regulations naming intended manager of core database**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations naming an entity as the intended manager of the core database. 20
- (2) The Minister may make the recommendation only on the written request of the entity.
- 65C Regulations for previous manager or intended manager of core database**
- (1) This section applies if 1 or both of the following apply: 25
- (a) regulations are made under **section 65A** to appoint a new manager of the core database:
- (b) regulations are made under **section 65B** naming an intended manager of the core database.
- (2) For the purposes of this section, the provisions referred to in **subsection (3)** apply as if the previous manager or intended manager were the manager of the core database. 30
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) the purposes described in— 35
- (i) section 62(e) and (f):
- (ii) section 63(1)(a), (c), (g), (h), and (j):
- (iii) section 64(a):
- (iv) section 65:

- (b) providing for audits of compliance with regulations made under **paragraph (a)(i) to (iii)** and for matters related to the audit, including the auditor’s powers:
- (c) prescribing offences for the breach of, or non-compliance with, regulations made under **paragraph (a)(i) to (iii)**: 5
- (d) prescribing penalties not exceeding \$20,000 for any of those offences:
- (e) providing that a person is liable for damages for any loss or damage caused by that person’s contravention of regulations made under **paragraph (a)(i) to (iii)**.
- (4) If regulations are made, or to be made, under this section for the purpose described in section 63(1)(j), section 63(2) to (7) applies— 10
- (a) to the previous manager or intended manager as if it were the manager of the core database; and
- (b) to the regulations as if they were made, or to be made, under section 63.
- (5) If regulations are made under this section for a purpose described in section 65, sections 66 and 67 apply— 15
- (a) to the previous manager or intended manager as if it were the manager of the core database; and
- (b) to the regulations as if they were made under section 65.
- 65D Duration of regulations for previous manager or intended manager of core database** 20
- (1) Regulations made under **section 65C** are revoked on the close of the fifth anniversary of their commencement unless—
- (a) the regulations are revoked earlier; or
- (b) the Governor-General by Order in Council confirms that the regulations will remain in force. 25
- (2) If an Order in Council is made under **subsection (1)(b)**, the regulations remain in force until they are revoked.
- 17 Section 66 amended (Information to be supplied to chief executive)**
- (1) In section 66(1) and (3), replace “LIC or any other dairy industry entity nominated by the Crown to manage the core database” with “The manager of the core database”. 30
- (2) In section 66(2), replace “LIC or any other dairy industry entity nominated by the Crown to manage the core database” with “the manager of the core database”. 35
- (3) In section 66(2), replace “LIC’s or that other dairy industry entity’s” with “the manager’s”.

18 Section 68 replaced (Database if LIC wound up)

Replace section 68 with:

68 When management of core database reverts to the Crown

The management of the core database reverts to the Crown if—

- (a) the Minister and the manager of the core database agree under **section 43A(2)(a)** that **section 43A(1)** no longer applies; or 5
- (b) a liquidator or interim liquidator is appointed for the manager of the core database under Part 16 of the Companies Act 1993 or any other enactment; or
- (c) an administrator is appointed for the manager of the core database in respect of a voluntary administration under Part 15A of the Companies Act 1993; or 10
- (d) a receiver is appointed in respect of all or substantially all of the property of the manager of the core database; or
- (e) a statutory manager is appointed for the manager of the core database under Part 3 of the Corporations (Investigation and Management) Act 1989 or any other enactment; or 15
- (f) the manager of the core database is removed from the register of companies kept under section 360(1)(a) of the Companies Act 1993; or
- (g) the manager of the core database is liquidated, wound up, or dissolved or otherwise ceases to exist. 20

19 Section 69 repealed (Herd Testing Regulations 1958 deemed to have been made under this Act)

Repeal section 69.

19A Section 71 amended (Statement of principles)

25

Replace section 71(b) with:

- (b) new co-op must accept applications to supply it with milk from new entrants and existing shareholders who meet the criteria set out in **section 73** and may, in its discretion, accept applications to supply it with milk from other new entrants: 30

19B Section 72 amended (Overview)

(1) Replace section 72(1) with:

- (1) Sections 73 to 85 describe the obligations of new co-op if it accepts applications from new entrants and shareholding farmers to supply milk, as shareholding farmers. 35

(2) Repeal section 72(2) and (3).

20 Section 73 amended (New co-op must accept application)

Replace section 73(3) with:

- (3) New co-op must notify the applicant, within 15 working days of receipt of the application,—
- (a) of its acceptance of the application; or
 - (b) of its rejection of the application under section 94 or 95; or
 - (c) that it is considering whether to reject the application under **section 96A or 96H**.
- (3A) Further provisions relating to the exceptions are in—
- (a) section 94 (the first exception):
 - (b) section 95 (the second exception):
 - (c) **sections 96A to 96G** (the third exception):
 - (d) **sections 96H to 96J** (the fourth exception).

20A Cross-heading above section 73 amended

In the cross-heading above section 73, replace “*must*” with “*may*”.

20B Section 73 replaced (New co-op must accept application)

- (1) Replace section 73 with:

73 New co-op’s obligations relating to applications by new entrants and shareholding farmers

- (1) It is the intention of this section that an applicant should be entitled to become a shareholding farmer if—
- (a) the majority of beneficial ownership or control in the applicant or the supply are held by persons who—
 - (i) have never previously been the majority partner, shareholder, or beneficiary of a supplier to a dairy processor; and
 - (ii) are farmers, sharemilkers, or contract milkers; and
 - (b) the application relates to the supply of less than 300,000 kg of milk solids in the first season.
- (2) New co-op must accept an application to increase the volume of milk supplied as a shareholding farmer to new co-op that is made by a shareholding farmer in an application period.
- (3) In any other case, new co-op may, in its discretion, accept an application made in an application period by a new entrant to supply milk to new co-op.
- (4) New co-op must notify the applicant of its decision on the application within 15 working days of receipt of the application.
- (5) Sections 136 to 139 specify—

<ul style="list-style-type: none"> (a) <u>how an application may be given; and</u> (b) <u>when an application is made.</u> 	
<ul style="list-style-type: none"> (6) <u>See sections 94 to 96J for exceptions relating to applications by new entrants and applications by shareholding farmers to increase supply.</u> 	
<ul style="list-style-type: none"> (2) <u>In Schedule 1, repeal clauses 4 and 5 and the cross-heading above clause 4.</u> 	5
20C Section 74 amended (Commencement and terms of supply)	
Replace section 74(1) with:	
<ul style="list-style-type: none"> (1) <u>If new co-op accepts an application under section 73 made in an application period, new co-op must accept the milk to which the application relates from the beginning of the season following that application period.</u> 	10
20D Section 81 amended (Requirements applying to co-operative shares for applications in application period)	
<ul style="list-style-type: none"> (1) <u>In section 81(1), replace “is required by section 73 to accept” with “accepts under section 73”.</u> 	15
<ul style="list-style-type: none"> (2) <u>In section 81(3), replace “is required to accept” with “accepts”.</u> 	
21 Section 86 amended (Publishing capacity constraint notices)	
In section 86(2)(d), replace “1 season” with “3 seasons”.	
22 New sections 96A to 96J and cross-headings inserted	
After section 96, insert:	
<i>Third exception</i>	
96A Supply from new dairy conversion: third exception	
<ul style="list-style-type: none"> (1) This section applies if an application by a new entrant or a shareholding farmer relates to the supply of milk from a new collection point. 	
<ul style="list-style-type: none"> (2) New co-op may reject the application if— 	25
<ul style="list-style-type: none"> (a) the application relates to the supply of milk from a new collection point; and (b) more than 50% of the production land that is used to produce the milk for supply to the new collection point is new production land. 	
96B Definitions relating to third exception	
In sections 96A to 96G ,—	
collection point means a place containing a milk vat, or milk vats, from which milk can be collected by new co-op or an independent processor	

new collection point—

- (a) means a collection point that has not been used at any time in the preceding 5 years to supply milk from cows as part of a business; but
- (b) does not include—
- (i) a collection point that will replace another collection point under **section 96C**; or
 - (ii) a collection point for milk produced on particular land if, ~~in on a regular basis throughout~~ the preceding 5 years, milk has been produced from the land as part of a business and ~~is, on a regular basis,~~ processed by the applicant themselves or sold to consumers as unprocessed milk.

Examples*Examples of a new collection point*

A dairy farmer (**A**) adds an additional collection point to A's existing farm. This is a new collection point. 15

A dairy farmer (**A**) subdivides A's farm, retaining the part of the farm on which the only collection point is located. The purchaser of the other part (**B**) builds a new collection point for the other part. The collection point built by B is a new collection point.

A dairy farmer (**A**) switches A's farm from dairy production to beef and lamb, closes the old collection point, and sells the old milk vats to A's neighbour (**B**). B changes B's land use from forestry to dairy, and builds a collection point for B's farm. This is a new collection point because there is no connection between the closed collection point and the new collection point. 20

~~A dairy farmer (**A**) closes A's business of selling unprocessed milk directly to consumers. Two years later, A applies to supply milk to new co-op from the same location. This is a new collection point because milk has not been sold directly to consumers on a regular basis in the preceding 5 years.~~ 25

Examples of where there is no new collection point

A dairy farmer (**A**) upgrades or relocates A's collection point on A's farm. This is not a new collection point. 30

Two dairy farmers (**A** and **B**) were using a shared collection point on A's farm. They close this point and build a collection point on B's farm. The collection point merely replaces an existing collection point and is therefore not a new collection point. 35

A dairy farmer (**A**) subdivides A's farm, retaining the part of the farm on which the only collection point is located. The purchaser of the other part (**B**) continues to use the collection point on A's farm. This is not a new collection point.

new production land means land that, in the preceding 5 years, has not been used at any time as part of the production land of a business 40

preceding 5 years, in relation to an application, means the 5-year period immediately preceding the date of receipt of the application

production land means the land that, in the ordinary course of business, is used for grazing ~~or feeding~~ lactating cows

Examples

~~Land that is used to produce crops that are used as feed for a dairy herd is production land.~~ 5

Land that is used only to graze non-lactating dairy cows is not part of the production land.

Land that is used only on a single occasion to graze lactating dairy cows is not part of the production land because it is not used for grazing ~~or feeding~~ lactating dairy cows in the ordinary course of business. 10

96C Replacement collection point

- (1) This section applies for the purposes of **paragraph (b)(i)** of the definition of new collection point in **section 96B**.
- (2) A collection point (**A**) will replace another collection point (**B**) if, at the start of the dairy season to which the application relates,— 15
 - (a) A will be the collection point for milk produced on particular land; and
 - (b) B will be the immediately preceding collection point for milk produced from that land; and
 - (c) B will have ceased to operate.
- (3) **Subsection (2)** applies regardless of whether the entire volume of milk that was collected from B will be collected from A. 20
- (4) If 2 or more applications relate to collection points that will replace another collection point (**B**) under **subsection (2)**, only the collection point that relates to the first application received by new co-op is to be treated as replacing B. 25

96D Application relating to 2 or more collection points

- (1) If an application relates to 2 or more collection points, new co-op must— 30
 - (a) apply **section 96A** separately to each collection point as if separate applications had been made for each collection point; and
 - (b) separately accept or reject the application in respect of each of those collection points.

Example

A shareholding farmer makes an application in respect of an existing collection point and a new collection point.

The application must be accepted to the extent to which it relates to the existing collection point (because the exception in **section 96A** only relates to new collection points). 35

<p>However, the production land for the new collection point is new production land. New co-op may reject the application to the extent to which it relates to this new collection point.</p>	
<p>(2) Sections 96A to 96C and 96E to 96G apply, with all necessary modifications, for the purposes of subsection (1).</p>	5
96E Evidence to support position that section 96A does not apply	
<p>(1) New co-op must treat the following as conclusive evidence that the exception in section 96A does not apply in respect of a collection point if the evidence relates to any time within the preceding 5 years:</p>	
<p>(a) a contract or correspondence with, or documentation from, an independent processor that clearly indicates that the independent processor has accepted milk from the collection point (for example, a receipt for milk collection):</p>	10
<p>(b) a farm dairy risk management programme applying to the collection point under the Animal Products Act 1999:</p>	15
<p>(c) a farm dairy assessment report applying to the collection point that is prepared for the purposes of the Animal Products Act 1999:</p>	
<p>(d) any other evidence of a prescribed kind.</p>	
<p>(2) An applicant may provide any other evidence that may establish with reasonable certainty that the exception in section 96A does not apply.</p>	20
96F Procedure if new co-op considers third exception applies	
<p>(1) If new co-op is considering rejecting an application under section 96A(2), the notice that new co-op must give the applicant under section 73(3)(4) must state the reasons for new co-op's opinion.</p>	
<p>(2) The applicant must, within 15 working days after receiving a notice under section 73(3)(4),—</p>	25
<p>(a) provide any further evidence to support the application; or</p>	
<p>(b) notify new co-op in writing that the applicant agrees to provide further evidence; or</p>	
<p>(c) notify new co-op in writing that the applicant refuses to provide further evidence.</p>	30
<p>(3) If new co-op is notified under subsection (2)(b), it must as soon as is reasonably practicable notify the applicant of a reasonable time within which to provide further evidence.</p>	
<p>(4) New co-op must notify the applicant of the acceptance or rejection of the application within 15 working days after—</p>	35
<p>(a) the applicant provides further evidence under subsection (2)(a):</p>	
<p>(b) the date on which new co-op is notified under subsection (2)(c):</p>	

- (c) the end of the 15-working-day period referred to in **subsection (2)** (if the applicant does not comply with that subsection):
- (d) the end of the reasonable time set under **subsection (3)**.
- (5) The time frames in **subsections (2) to (4)** do not affect new co-op's obligation under section 73(1) or (2) to accept an application initially made in an application period. 5
- (6) A second or subsequent request for further evidence does not affect the time frame within which new co-op must act under **subsection (4)**.
- 96G Disclosure of evidence relied on to reject application under section 96A**
- If new co-op rejects the whole or a part of an application under **section 96A**, new co-op must provide written reasons for its decision, on demand, to— 10
- (a) the new entrant or shareholding farmer to which the application relates; and
- (b) the Commission.
- Fourth exception* 15
- 96H Inability to comply with new co-op's terms of supply: fourth exception**
- (1) This section applies if an application by a new entrant or a shareholding farmer is made in an application period.
- (2) New co-op may reject the application if new co-op considers that the applicant is not likely to comply with new co-op's terms of supply. 20
- 96I Procedure if new co-op considers fourth exception applies**
- (1) If new co-op is considering rejecting an application under **section 96H(2)**, the notice that new co-op must give the applicant under section **73(3)(4)** must state—
- (a) that new co-op is considering rejecting the applicant's application because it considers that the applicant is not likely to comply with new co-op's terms of supply; and 25
- (b) the reasons for new co-op's opinion.
- (2) The applicant must, within 15 working days after receiving a notice under section **73(3)(4)**,— 30
- (a) provide further information; or
- (b) notify new co-op in writing that the applicant agrees to provide further information; or
- (c) notify new co-op in writing that the applicant refuses to provide further information. 35

- (3) If new co-op is notified under **subsection (2)(b)**, it must as soon as is reasonably practicable notify the applicant of a reasonable time within which to provide further information.
- (4) New co-op must notify the applicant of the acceptance or rejection of the application within 15 working days after— 5
- (a) the applicant provides further information under **subsection (2)(a)**;
- (b) the date on which new co-op is notified under **subsection (2)(c)**;
- (c) the end of the 15-working-day period referred to in **subsection (2)** (if the applicant does not comply with that subsection);
- (d) the end of the reasonable time set under **subsection (3)**. 10
- (5) The time frames in **subsections (2) to (4)** do not affect new co-op’s obligation under section 73(1) or (2) to accept an application initially made in an application period.
- (6) A second or subsequent request for further information does not affect the time frame within which new co-op must act under **subsection (4)**. 15
- 96J Disclosure of information relied on to reject application under section 96H(2)**
- If new co-op rejects an application under **section 96H(2)**, new co-op must provide written reasons for its decision, on demand, to—
- (a) the applicant; and 20
- (b) the Commission.
- 23 Section 106 amended (No discrimination between suppliers)**
- After section 106(4), insert:
- (5) In its terms of supply, but subject to subsections (1) to (4), new co-op may provide for differential pricing for milk based on any matters specified in the terms of supply, including, but not limited to, matters that relate to animal welfare, food safety, health and safety, employment conditions, the environment, climate change, and sustainability. 25
- 23A Section 107 amended (Regulation of supply contracts for raw milk)**
- In section 107(1), after “offer new entrants”, insert “it accepts under **section 73**”. 30
- 23B Section 109A amended (Subpart 5 of Part 2 provisions do not apply)**
- Repeal section 109A(b).
- 24 Section 115 amended (Regulations relating to milk)**
- (1) After section 115(1)(f)(i), insert: 35

- (ia) periodic returns of milk solids bought from, or sold to, other persons:
- (2) After section 115(1)(f), insert:
- (fa) prescribe kinds of evidence for the purposes of **section 96E(1)(d)**; and
- (fb) prescribe entities and persons who may certify raw milk as organic milk; and
- (fc) prescribe any matter that is authorised to be prescribed for the purposes of the definitions of raw milk and winter milk in section 5(1); and
- 25 Section 134 replaced (Levy regulations)**
- Replace section 134 with:
- 134 New co-op must pay levy**
- (1) New co-op must pay, in each financial year, a levy to the Minister that is determined in accordance with regulations made under **subsection (2)**.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) specifying the amount of the levy, or method of calculating or ascertaining the amount of the levy, on the basis that the costs estimated under **subsection (4)** should be met fully out of the levy:
- (b) including in the levy, or providing for the inclusion in the levy of, any shortfall in recovering those actual costs (including, without limitation, providing for a reconciliation of the levy against the levy that would have been payable had the calculation used the actual costs and invoicing new co-op for the amount under-recovered from it as part of the levy):
- (c) refunding, or providing for refunds of, any over-recovery of those actual costs:
- (d) specifying 1 or more financial years or part financial years to which the levy applies:
- (e) providing for the levy amount to be specified in the *Gazette* or some other publication (if the amount is not specified in the regulations):
- (f) providing for the payment and collection of the levy:
- (g) requiring payment of the levy for a financial year or part financial year, even though the regulations may be made after that financial year has commenced:
- (h) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of the levy.

- (3) The regulations may provide for the levy to apply, and be calculated in respect of, 1 or more financial years (with the levy being collected in each of those years from new co-op).
- (4) In calculating estimated costs for the purposes of **subsection (2)(a)**, the Commission— 5
- (a) may include—
- (i) the cost of making determinations; and
- (ii) the cost of enforcing this subpart or subpart 5A; and
- (iii) the cost of enforcing determinations in the High Court; and
- (iv) over-recoveries or under-recoveries of actual costs; and 10
- (v) the cost of conducting reviews under subpart 5A; and
- (b) must exclude—
- (i) the cost of taking other proceedings in the High Court, or defending proceedings against the Commission in the High Court; and
- (ii) the cost of investigations that are not related to complaints or 15
- determinations made under this subpart; and
- (iii) the cost of providing input for the reports under **section 147** on the operation of subparts 5 and 5A; and
- (c) must calculate and deduct the total amount of application fees likely to be received. 20
- (5) The Minister must consult with new co-op and the Commission before making a recommendation under **subsection (2)**.
- (6) The amount of unpaid levy is recoverable in a court of competent jurisdiction as a debt due to the Crown.
- 26 Section 145 amended (Application of Commerce Act 1986 provisions) 25**
- (1) After section 145(a), insert:
- (aa) sections 74A to 74C (provisions relating to undertakings):
- (2) After section 145(l), insert:
- (la) section 100A (stating case for High Court):
- 27 New sections 147 to 150 and cross-heading inserted 30**
- After section 146, insert:
- Regular reports on operation of subparts 5 and 5A*
- 147 Minister must require regular reports**
- (1) The Minister must require regular reports from the chief executive on whether this subpart and subpart 5A should be retained, repealed, or amended. 35

- (2) The Minister must require the first report no earlier than 4 years after the commencement of the Dairy Industry Restructuring Amendment Act (**No 3**) 2019 and present the report to the House of Representatives no later than 6 years after commencement of that Act.
- (3) The Minister must require any subsequent report no earlier than 4 years after presentation of the previous report to the House of Representatives, and present the report to the House of Representatives no later than 6 years after presentation of the previous report to the House of Representatives, unless **subsection (4) or (5)** applies. 5
- (4) If a Bill is introduced into the House of Representatives to amend this Act in the 6 years before the Minister is required to present a report under **subsection (3)** and the Bill is passed, the Minister must instead— 10
- (a) require a report no earlier than 4 years after the commencement of that enactment or (if different provisions come into force on different dates) the earliest date on which any provision of the enactment commences (the **commencement date**); and 15
- (b) present the report to the House no later than 6 years after the commencement date.
- (5) If the Bill is withdrawn, lapses with the dissolution or expiry of Parliament, or is defeated, the Minister must— 20
- (a) request the report no earlier than 4 years after the withdrawal, lapse, or defeat of the Bill; and
- (b) present the report to the House of Representatives no later than 6 years after the commencement date.
- 148 Commission input** 25
- (1) The Minister may, in consultation with the Minister responsible for the Commerce Act 1986, require the Commission to provide input for a regular report under **section 147**.
- (2) In providing any input to the report as required by the Minister, the Commission may exercise the powers specified in section 145. 30
- 149 Terms of reference for report to be published**
- (1) The terms of reference for a report under **section 147** may provide for any matter that relates to whether subparts 5 and 5A should be retained, repealed, or amended that the Minister considers appropriate.
- (2) The Minister must publish the terms of reference on the Ministry's Internet site. 35
- 150 Limits on effect of report and response**
- (1) The Crown is not bound by a report under **section 147**.
- (2) **Sections 147 to 149** are not intended to—

(a)	create any rights or protections in relation to any person or group of persons; or	
(b)	confer any rights or protections on any person or group of persons.	
28	Section 150A amended (Purpose of this subpart)	
	After section 150A(2), insert:	5
(3)	For the purposes of this subpart, new co-op may pay a farm gate milk price to shareholder farmers that differs from the base milk price.	
29	Section 150C amended (Setting of base milk price in way that is consistent with certain principles)	
	After section 150C(2), insert:	10
(3)	For the purposes of subsection (1)(b), any estimate of the return on capital must be made applying the capital asset pricing model.	
(4)	For the purposes of subsection (3) , the asset beta used in the application of the capital asset pricing model must be consistent with the estimated asset betas of other dairy and commodity processors.	15
(5)	In subsection (4) , asset beta means a measurement of a firm's exposure to systematic risk where systematic risk measures the extent to which the returns on a company fluctuate relative to the equity returns in the stock market as a whole.	
29A	<u>New section 150CA and cross-heading inserted</u>	20
	After section 150C, insert:	
	<i>Farm gate milk price</i>	
	<u>150CA Provisions relating to farm gate milk price</u>	
(1)	For the purposes of this subpart, new co-op may pay a farm gate milk price to shareholder farmers that differs from the base milk price.	25
(2)	New co-op must publish as soon as practicable after it sets the farm gate milk price for any season, on new co-op's website in an electronic form that is publicly accessible, a notice that states—	
(a)	both the farm gate milk price and the base milk price for that season; and	
(b)	explains why the farm gate milk price differs or does not differ from the base milk price (as the case may be).	30
30	Section 150E amended (Appointment of members of panel)	
(1)	After section 150E(1), insert:	
(1A)	New co-op must appoint 1 member of the panel who is nominated by the Minister, and the appointment must be on the same terms and conditions that apply to members appointed under subsection (1).	35

- (2) In section 150E(3), after “subsection”, insert “**(1A)** or”.
- 31 Section 156 repealed (Gift duty and taxation in respect of Livestock Improvement Corporation Limited)**
Repeal section 156.
- 32 New Schedule 1 inserted** 5
Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Consequential and other amendments

- 33 Consequential amendments to principal Act** 10
Amend the principal Act as set out in **Part 1 of Schedule 2**.
- 34 Amendments to regulations**
- (1) Amend the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 as set out in **Part 2 of Schedule 2**.
- (2) Amend the Dairy Industry Restructuring (Raw Milk) Regulations 2012 as set out in **Part 3 of Schedule 2**. 15
- 35 Revocation of Herd Testing Regulations 1958**
The Herd Testing Regulations 1958 (SR 1958/44) are revoked.

Schedule 1
New Schedule 1 inserted

s 32

Schedule 1
Transitional, savings, and related provisions

5

s 5B

Part 1
Provisions relating to Dairy Industry Restructuring Amendment Act
(No 3) 2019

LIC

10

1 Employees of LIC from before restructuring under subpart 4 of Part 2

- (1) This clause applies to a person to whom section 61 applied immediately before its repeal by the Dairy Industry Restructuring Amendment Act **(No 3) 2019**.
- (2) To avoid doubt, the repeal does not affect the person's status or rights, or terms or conditions of employment, under that section.

15

2 LIC to be treated as previous manager of core database

- (1) LIC must be treated as a previous manager of the core database for the purposes of this Act.
- (2) Information provided to LIC, whether before, on, or after the commencement of this clause, must be treated as information that comprises part of the core database if the information was or is provided under—
- (a) the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations; or
- (b) any regulations made under this Act.

20

- (3) Regulations applying to LIC may be made under **section 65C** as if LIC were replaced as manager of the core database by regulations made under **section 65A** (as inserted by the Dairy Industry Restructuring Amendment Act **(No 3) 2019**).

25

- (4) **Section 65D** does not apply to regulations made under **section 65C** that apply to LIC.

30

3 Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 continue in force

- (1) The Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 (the **regulations**) continue in force.

(2)	To the extent that the regulations were made under sections 62 to 65A as in force immediately before the commencement of this clause, they must be treated as having been made under sections 62 to 65 as amended by the Dairy Industry Restructuring Amendment Act (No 3) 2019 .	
(3)	However, to the extent that the regulations apply to LIC, they must be treated as having been made under section 65C as inserted by the Dairy Industry Restructuring Amendment Act (No 3) 2019 .	5
(4)	Section 65D does not apply to the regulations referred to in subclause (3) .	
	<i>New dairy conversions</i>	
4	New dairy conversion exception	10
(1)	The new dairy conversion provisions apply in respect of application periods under section 75 that start after the commencement of those provisions.	
(2)	The new dairy conversion provisions are sections 96A to 96G .	
5	New collection points	
	A dairy conversion for which a building consent was granted before the date of commencement of section 96A must not be treated as a new collection point for the purposes of that section.	15
	<i>Levies</i>	
6	Levy payable by new co-op	
	Regulations made under section 134 (as replaced by section 25 of the Dairy Industry Restructuring Amendment Act (No 3) 2019) apply to financial years that start on or after 1 July 2020 (and regulations may be made for that purpose under section 134 (as replaced) at any time before that date).	20
	<i>Changes to open entry provisions</i>	
7	<u>Effect of changes to open entry provisions on existing shareholding farmers</u>	25
(1)	<u>The commencement of section 73 (as replaced by section 20B of the Dairy Industry Restructuring Amendment Act (No 3) 2019) does not affect the ability of the Commission to receive and determine applications in respect of conduct before that commencement, or the ability of a party to a determination or the Commission to enforce a determination, and sections 120 to 133 have effect for that purpose.</u>	30
(2)	<u>An application under section 120 may not be made later than 1 year after that commencement.</u>	
(3)	<u>The commencement of section 73 (as so replaced) does not affect the liability of a person for a contravention of subpart 5 or regulations made under this Act</u>	35

committed before that commencement, and sections 140 to 146 have effect for that purpose.

- (4) Proceedings for a contravention described in **subclause (3)** may be taken as if **section 73** (as so replaced) had not been enacted.

Schedule 2

Consequential and other amendments

ss 33, 34

Part 1

Consequential amendments to principal Act 5

Section 47

Repeal section 47.

Section 63

In section 63(1)(b), replace “a panel” with “an Access Panel”.

In section 63(1)(c)(i), (d), (e), (g), (h), and (i) and (3), replace “panel” with “Access Panel” in each place. 10

In section 63(1)(f), replace “panel’s” with “Access Panel’s”.

Section 65

In section 65(a)(ii), replace “panel” with “Access Panel”.

Section 72

15

In section 72(3), replace “96” with “**96J**”.

After section 72(10), insert:

(11) **Sections 147 to 150** provide for reports on the operation of subparts 5 and 5A of Part 2.

Section 163

20

In section 163, replace “65” with “**65C**”.

Part 2

Consequential amendments to Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001

Regulation 3

25

In regulation 3(1), insert in its appropriate alphabetical order:

Access Panel means the New Zealand Dairy Core Database Access Panel established by regulation 13

In regulation 3(1), revoke the definition of **manager of the core database**.

In regulation 3(1), revoke the definition of **Panel**. 30

After regulation 3(2)(d), insert:

(e) manager of the core database.

Regulation 11

In regulation 11(b), replace “a Panel” with “an Access Panel”.

In regulation 11(c) and (d), replace “Panel” with “Access Panel”.

Cross-heading above regulation 13

Replace the cross-heading above regulation 13 with:

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Access Panel

Regulation 13

In the heading to regulation 13, replace “**Panel**” with “**Access Panel**”.

In regulation 13(1), replace “a Panel” with “an Access Panel”.

In regulation 13(2) and (3), replace “Panel” with “Access Panel”.

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Regulation 14

In the heading to regulation 14, replace “**Panel**” with “**Access Panel**”.

In regulation 14, replace “Panel” with “Access Panel”.

Regulation 15

In regulation 15, replace “Panel” with “Access Panel”.

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Regulation 16

In the heading to regulation 16, replace “**Panel**” with “**Access Panel**”.

In regulation 16, replace “Panel” with “Access Panel”.

Regulation 17

In regulation 17(a), replace “Panel” with “Access Panel”.

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Regulation 18

In regulation 18(1) and (2), replace “Panel” with “Access Panel” in each place.

Regulation 19

In the heading to regulation 19, replace “**Panel**” with “**Access Panel**”.

In regulation 19(1) and (3), replace “Panel” with “Access Panel”.

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Regulation 20

In the heading to regulation 20, replace “**Panel**” with “**Access Panel**”.

In regulation 20(1) and (2), replace “Panel” with “Access Panel”.

Regulation 21

In the heading to regulation 21, replace “**Panel**” with “**Access Panel**”.

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In regulation 21(1) and (2), replace “Panel” with “Access Panel”.

Regulation 21—*continued*

In regulation 21(2)(a) and (b), replace “Panel’s” with “Access Panel’s”.

Regulation 23

In the heading to regulation 23, replace “**Panel**” with “**Access Panel**”.

In regulation 23, replace “Panel” with “Access Panel”.

Regulation 24

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In regulation 24(1)(a), replace “Panel” with “Access Panel”.

Regulation 25

In regulation 25(1)(a), replace “Panel” with “Access Panel”.

Regulation 26

In regulation 26(1)(a), replace “Panel” with “Access Panel”.

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Regulation 27

In regulation 27(1), (2), (3), and (5), replace “Panel” with “Access Panel”.

Regulation 32

In regulation 32(2)(c), replace “Panel” with “Access Panel”.

Schedule 1AA

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In Schedule 1AA, replace clause 4 with:

4 Transitional provision relating to decisions of Dairy Herd Improvement Tribunal

(1) This clause applies to decisions of the Dairy Herd Improvement Tribunal that were in effect immediately before the commencement of **Part 2 of Schedule 2** of the Dairy Industry Restructuring Amendment Act (**No 3**) 2019.

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(2) The decisions remain in effect until this clause is revoked.

Schedule 4

In the Schedule 4 heading, replace “**Panel**” with “**Access Panel**”.

In Schedule 4, clauses 4, 7, and 14 to 17, replace “Panel” with “Access Panel” in each place.

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In Schedule 4, cross-heading above clause 6, replace “*Panel’s*” with “*Access Panel’s*”.

In Schedule 4, clauses 7, 15(1), 16(a), and 17(1)(a), replace “Panel’s” with “Access Panel’s”.

In Schedule 4, heading to clause 14, replace “**Panel**” with “**Access Panel**”.

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Schedule 5

In the Schedule 5 heading, replace “Panel” with “Access Panel”.

In Schedule 5, clauses 1 to 8, replace “Panel” with “Access Panel” in each place.

In Schedule 5, clause 8(a), replace “Panel’s” with “Access Panel’s”.

Schedule 6

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In Schedule 6, form, after “manager of the core database”, insert “(or LIC)” in each place.

Part 3

**Consequential and other amendments to Dairy Industry
Restructuring (Raw Milk) Regulations 2012**

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Regulation 3

In regulation 3(1), replace the definition of **farm gate milk price** with:

farm gate milk price has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **kilograms of milksolids** with:

kilograms of milk solids, except in Part 1A, has the meaning given in section 5(1) of the Act

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In regulation 3(1), replace the definition of **organic milk** with:

organic milk has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **own supply** with:

own supply, in relation to an independent processor,—

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(a) means raw milk collected or purchased by or on behalf of the independent processor from dairy farmers or any other source (such as new co-op, a dairy processor, or an intermediary); but

(b) does not include milk supplied to an independent processor under section 108 of the Act or under regulation 4

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In regulation 3(1), replace the definition of **raw milk** with:

raw milk has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **total cost of milk** with:

total cost of milk has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **total organic milk premium** with:

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total organic milk premium has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **total winter milk premium** with:

total winter milk premium has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **winter milk** with:

Regulation 3—continued

winter milk has the meaning given in section 5(1) of the Act

Regulation 6

Replace regulation 6(3) with:

- (3) Despite subclauses (1) and (2), new co-op is not required to supply raw milk to an independent processor (other than Goodman Fielder New Zealand Limited) if,— 5
- (a) in any 3 consecutive seasons before 1 June 2023, the independent processor’s own supply of raw milk is 30 million litres or more in each of those seasons as specified in returns provided to new co-op under regulation 18(2); or 10
- (b) in any season beginning on or after 1 June 2023, the independent processor’s own supply of raw milk is 30 million litres or more as specified in the returns provided to new co-op under regulation 18(2).

Regulation 7

In regulation 7(1)(a), replace “250” with “350”. 15

Regulation 17

Replace regulation 17 with:

- 17 Return by new co-op relating to actual supply of raw milk to independent processors**
- (1) New co-op must, no later than the first working day in July of the current season, provide a return to the chief executive stating the total quantity of raw milk it actually supplied— 20
- (a) to each independent processor in each month of the previous season; and
- (b) to all independent processors for the whole of the previous season.
- (2) For the purposes of **subclause (1)(a) and (b)**, new co-op must specify in the return the total quantity of raw milk supplied by new co-op under these regulations (including raw milk supplied at an agreed price under regulation 20(2)). 25

Regulation 19

In regulation 19(1), delete “(other than Goodman Fielder New Zealand Limited)”.

Regulation 20 30

In regulation 20(4), after “**default milk price**”, insert “, in relation to an independent processor other than Goodman Fielder New Zealand Limited,”.

After regulation 20(4), insert:

Regulation 20—*continued*

- (5) In subclause (3), **default milk price**, in relation to Goodman Fielder New Zealand Limited, means the default milk price as defined in subclause (4) plus 10 cents per kilogram of milk solids.

Regulation 23B

Revoke regulation 23B(2).

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New cross-heading above ~~clause~~ regulation 23A inserted

Before ~~clause~~ regulation 23A, insert:

Returns of milk solids collected from dairy farmers

New ~~clauses~~ regulations 23D to 23F and cross-headings inserted

After ~~clause~~ regulation 23C, insert:

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Returns of raw milk bought or sold by independent processors

23D Independent processors must provide return

- (1) Each independent processor must, in accordance with this Part, provide a return of raw milk bought from, or sold to, another independent processor in each season.
- (2) The return must be provided to the chief executive within 30 days after the end of the season.

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23E Required information

- (1) The return of an independent processor for a season must specify—
- (a) the total amount (in kilograms) of milk solids that the processor bought from, or sold to, another independent processor during the season; and
- (b) the part of that total amount (if any) that the processor bought or sold under the 20% rule.

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- (2) In this regulation,—

20% rule means the entitlement to supply to independent processors up to 20% of weekly production under section 108 of the Act

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processor—

- (a) means an independent processor that is required to provide a return; but
- (b) does not include an independent processor for a season if **regulation 23F** applies in respect of that season.

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New clauses regulations 23D to 23F and cross-headings inserted—continued

23F	Independent processor that collects less than 2,000 kilograms of milk solids	
(1)	If the total amount of milk solids that an independent processor collects from dairy farmers and any other source is less than 2,000 kilograms during a season, the return for that season must indicate that fact.	5
(2)	Regulation 23E does not apply to that return.	
	<i>Certifiers for organic milk</i>	
23G	Certifiers	
	Raw milk may be certified as organic milk by—	
(a)	New Zealand Biological Producers & Consumers Society Incorporated <u>Biogro NZ Limited:</u>	10
(b)	the Bio Dynamic Farming & Gardening Association in New Zealand Incorporated:	
(c)	AsureQuality Limited.	

Legislative history

22 August 2019
27 August 2019

Introduction (Bill 166–1)
First reading and referral to Primary Production Committee