

# **Animal Products (Dairy Products and Other Matters) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Bill provides for the regulation of the dairy industry under the Animal Products Act 1999 (Animal Products Act) and repeals the Dairy Industry Act 1952 (Dairy Industry Act). This will ensure that product safety outcomes in the dairy industry are provided for in a risk-based management environment.

The policy objectives of the Bill are:

- management of the risks to human and animal health from the consumption and use of dairy products; and
- the facilitation of entry of dairy products to overseas markets by providing the controls and mechanisms needed for market access and the giving of official assurances.

The Animal Products Act applies to all animals, animal material, and animal product unless they are excluded. Dairy produce is currently excluded from the Animal Products Act. This Bill will remove that exclusion. Dairy produce could be brought into the Animal Products Act by simply removing the exclusion in section 8(1)(b) and the reference in section 13(3)(e) of the Act. After consultation with the industry, however, the preferred option is to add special definitions of the terms dairy processor, dairy material, and dairy product. These terms specifically recognise the dairy industry in the Animal Products Act giving the industry the recognition on the face of the Act sought by its representatives. As all dairy processors will be required to operate under a risk management programme unless they are excluded or exempt from all or part of the Animal Products Act, this option also has the benefit of reflecting the current

risk-based management requirements under the Dairy Industry Act. Currently farm dairies, dairy stores, and transporters and dairy manufacturers are required to operate under product safety programmes.

The Bill also provides for amendments to be made to the Animal Products Act which amend the operation of the Act. These amendments will include amendments to the export requirements, the conditions which can be applied to risk management programmes and the risk management requirements for multi-business risk management programmes. A range of other, essentially technical, amendments will also be made.

### **Commencement**

Subject to the Parliamentary processes the Bill is to commence on 1 July 2004.

At the time of commencement all holders of product safety programmes will be deemed to be the holders of risk management programmes.

A transition period of 12 months will apply to all dairy processors operating at the time of commencement and who are not operating under product safety programmes. Those that operate under the Dairy Industry Regulations will be able to continue operations under those regulations for the period of the transition. By the time that year has expired they will be required to operate under a risk management programme or a food safety programme. Dairy processing activities that are regulated by the Food Hygiene Regulations (and not the Dairy Industry Regulations) will have 1 year, at the expiry of which they are to operate under a food safety programme or a risk management programme.

### **Coverage**

The Bill applies to all dairy processors from the farm dairy/milking shed until the dairy product is sent to export or retail.

The Bill enables the Governor-General by Order in Council to exempt dairy material, dairy product, or dairy processors from all or parts of the Animal Products Act if certain criteria are met. Exemptions would be given only when the risks are managed under other legislation (eg, the Food Act 1981 or the Agricultural Compounds

and Veterinary Medicines Act 1997) or where the known risks are negligible.

### **Clause by clause analysis**

*Clause 1* is the Title clause. It is envisaged that the Bill will eventually be split into 2 separate Bills amending, respectively, the Animal Products Act 1999 and the Animal Products (Ancillary and Transitional Provisions) Act 1999.

*Clause 2* provides for the Bill to come into force on 1 July 2004 (except for certain amendments to the Food Hygiene Regulations 1974, which come into force on 1 July 2005).

## **Part 1**

### **Amendments to Animal Products Act 1999**

*Clause 4* amends the Title of the Act to reflect the repeal of the Dairy Industry Act 1952.

*Clause 5* inserts various definitions relevant to the dairy industry. It also reflects the change in nomenclature from persons and bodies being “accredited” to perform certain functions or activities under the Act to being “recognised” for the performance of those functions or activities. The change in terminology is made to avoid confusion in the industry between requirements made under the law and those that become applicable when internationally accepted accreditation systems that are not legally binding (for example, the ISO system) are adopted.

*Clause 6* repeals and replaces section 6 of the Act to ensure that references to the Act or to the related Animal Products (Ancillary and Transitional Provisions) Act 1999 include references to regulations, specifications, or other requirements under either Act. This is seen as desirable in light of the new definition of **Act** in section 29 of the Interpretation Act 1999.

*Clause 7* amends section 8 of the Act to repeal the previous exclusion of dairy produce from the ambit of the Act.

*Clause 8* amends section 13 of the Act to reflect the fact that there may be risk management programmes covering more than 1 business, and to remove the exclusion of dairy produce from the Act.

*Clause 9* amends section 15 of the Act to include a reference to dairy processors in the list of persons who may be required by Order in Council to have a risk management programme.

*Clause 10* amends section 17A of the Act, which relates to multi-business risk management programmes. The amendment requires the Director-General to be satisfied, before approving a proposed multi-business programme, that each person whose business is covered by the proposed programme is aware of the implications if there should be a suspension or deregistration of the programme.

The *new subsection (5)* also provides for the Director-General to decline approval if not satisfied that the operator, or any other key persons, of a business proposed to be covered by a programme is not a fit and proper person to operate an animal product business having regard to the nature of previous convictions for offences.

*Clause 11* amends section 22 of the Act, which deals with the registration of risk management programmes, to allow the Director-General to refuse to register a multi-business risk management programme if not satisfied of the matters covered in the *new section 17A(5)* in relation to businesses proposed to be covered by the programme.

The addition of the *new subsection (3A)* allows the conditions that may be imposed for the first year of operation, or the first year after any significant alteration, to be amended as necessary or new conditions imposed.

*Clause 12* amends section 48 of the Act to remove a reference to the previous exemption of dairy produce.

*Clause 13* inserts a *new section 59B* into the Act that allows the Director-General to exempt animal or dairy material or product for export from the requirements of any food standards issued under the Food Act 1981, where satisfied that it is appropriate to do so having regard to the requirements of the relevant overseas market.

*Clause 14* amends section 82 of the Act, which sets out the power of the Director-General to direct the disposal of animal material or product in certain circumstances, to ensure that it applies where an operation subject to a regulated control scheme is suspended, or there is a deregistration of an operator or operation under a regulated control scheme.

*Clause 15* amends section 88 of the Act, which sets out animal product officers' powers of examination, to allow officers to require copies of documents or other records to be forwarded to them.

*Clause 16* amends section 105 of the Act to clarify that it is “verification” activities that may be carried out only by persons recognised by the Director-General for the purpose.

*Clause 17* inserts a *new section 108A* into the Act that allows the Director-General to suspend recognition of a person or agency for particular functions or activities (rather than totally withdraw recognition under section 109), where the Director-General has reasonable grounds to believe that the performance of the person or agency is unsatisfactory.

*Clause 18* amends section 140 of the Act to allow evidence as to whether or not a matter was recorded on the risk management programme register to be given by way of certificate.

*Clause 19* amends section 161 of the Act, which relates to the disclosure of information for the purpose of ensuring product safety, to update the list of relevant legislation.

*Clause 20* amends section 162 of the Act, which sets out the right of review of certain decisions, to refer to a decision to suspend recognition of a person or agency under the *new section 108A*.

*Clause 21* amends section 167 of the Act, which deals with notices, to refer to the notification of an exemption under the *new section 59B*.

*Clause 22* amends section 169 of the Act to refer to the repeal of the Dairy Industry Act 1952.

## Part 2

### Amendments to Animal Products (Ancillary and Transitional Provisions) Act 1999

*Clause 24* amends the Title of the Act to refer to the repeal of the Dairy Industry Act 1952.

*Clause 25* amends the definitions of **existing business** and **new business** in section 4 of the Act to set the date of commencement of the Bill as the relevant date for determining whether a dairy processing business is an existing or a new business.

*Clause 26* amends section 9 of the Act to set 1 July 2004 as the date by which all renderers (including those not licensed under the Meat Act 1981) must have a registered risk management programme, and 1 July 2005 as the date by which all petfood processors (including

those not licensed under the Meat Act 1981) must have a registered programme.

*Clause 27* amends section 11 of the Act, which deals with new businesses, to refer to the date of commencement of the Bill as the relevant date for dairy processing businesses.

*Clause 28* amends section 61 of the Act to refer to recognised as well as accredited persons.

*Clause 29* inserts a new *Part 6* into the Act that deals with ancillary and transitional matters in relation to dairy products.

The *new section 75* repeals the Dairy Industry Act 1952.

The *new section 76* revokes various regulations.

The *new section 77* continues in force the Dairy Industry (IMA Certification) Regulations 2000 and the Dairy Industry (National Residue Monitoring Programme) Regulations 2002, subject to the amendments set out in *Schedule 2* of the Bill, as if they were regulated control schemes made by regulations under the Animal Products Act 1999.

The *new section 78* deems all product safety programmes approved by the Director-General under the Dairy Industry Regulations 1990 to be risk management programmes.

The *new section 79* gives dairy processing businesses that did not operate under an approved product safety programme a 1-year transitional period during which they must obtain registration of a risk management programme (or, if a non-exporting business wishes, approval of a food safety programme under the Food Act 1981). Until then, they must continue to comply with the requirements of the Dairy Industry Act 1952 and various regulations under that Act (which may be modified by regulations made under the Bill) or, in the case of premises that were not registered under the Dairy Regulations 1990, the requirements of the Food Hygiene Regulations 1974.

The *new section 80* indicates that applications for registration by persons or businesses to whom *section 79* applies should be made at least 3 months before 1 July 2005, the end of the transition period.

The *new section 81* provides that persons registered as exporters under the Dairy Industry (Exporter Registration) Regulations 2002 are deemed to be registered as exporters under section 55 of the Animal Products Act 1999.

The *new section 82* gives animal feed producers a 1-year transitional period during which they are not required to operate under a registered risk management programme (except to the extent that export feed may require an official assurance).

The *new section 83* states the equivalence of dairy material or product produced in compliance with the existing dairy regime, or in compliance with the transitional regime in the *new Part 6*, to material or product produced in compliance with Parts 2 to 4 of the Animal Products Act 1999.

The *new section 84* provides for the making of regulations dealing with transitional and savings matters.

*Clause 30* adds a *new Schedule 6* to the Act that sets out amendments to the 2 sets of regulations continued in force.

*Clause 31* amends the Food Act 1981 to exclude from its ambit dairy matters required to be covered by risk management programmes under the Animal Products Act 1999.

*Clause 32* provides for certain Animal Products regulations and the Food Hygiene Regulations 1974 to be amended in the manner indicated in *Schedule 3* of the Bill.

### Schedules

*Schedule 1* sets out numerous amendments to the Animal Products Act 1999 that generally involve the replacement of the word “accredited” with the word “recognised”.

*Schedule 2* sets out amendments to the Dairy Industry (IMA Certification) Regulations 2000 and the Dairy Industry (National Residue Monitoring Programme) Regulations 2002, which are continued in force. The amendments are of a consequential rather than substantive nature.

*Schedule 3* amends the Animal Products (Ancillary and Transitional Provisions) Regulations 2000, the Animal Products (Fees, Levies, and Charges) Regulations 2002, and the Animal Products Regulations 2000 to ensure that dairy material, products, and processing are excluded from the ambit of these regulations.

Also amended is the Animal Products (Exemptions and Inclusions) Order 2000. Of particular note are—

- the exemption from the requirements of Parts 2 to 4 of the Animal Products Act 1999 of—

- (a) the processing of dairy products consumed on the premises (for example, cafes and restaurants making their own yoghurts, ice-creams, cheeses, and so on):
- (b) the processing of certain foods containing dairy products but that are primarily made up of other ingredients:
- the exemption from the requirement for a risk management programme of—
  - (a) dairy processors who process dairy material for the domestic market (or Australia), if their operations are covered by a food safety programme under the Food Act 1981 (and if none of their operations otherwise require a risk management programme):
  - (b) dairy processing operations producing product for animal consumption (if none of the operations at the same place or premises requires a risk management programme):
- the exemption from export requirements of formulated caffeinated beverages and alcoholic beverages derived from dairy material:
- the inclusion within the ambit of the Animal Products Act 1999 of dairy material or product not intended for human or animal consumption, if it is processed at the same place or premises as dairy material or product requiring a risk management programme.

*Schedule 3* also amends the Food Hygiene Regulations 1974, particularly by removal of requirements relating to raw milk and ice-cream.

### **Regulatory impact and compliance cost statement**

#### ***Statement of problem and the need for government action***

The safety and trade of dairy products are currently regulated under the Dairy Industry Act. The deficiencies of the Act expose the Government and industry to unnecessary constraints and risks. The Dairy Industry Act does not provide an adequate legislative framework for ensuring product safety outcomes and to facilitate trade in a risk-based management environment.

The prescriptive and inflexible style of the Dairy Industry Act is inconsistent with the enabling style of legislation that has been used in modern risk-based legislation, such as the Animal Products Act. The Animal Products Act covers all animals, animal material, and animal product. Currently the material or product that is dairy produce within the meaning of the Dairy Industry Act is excluded from the ambit of the Animal Products Act. Dairy produce could be incorporated into the Animal Products Act by simply removing the specific dairy exclusion. This would lead, however, to a complex jigsaw of orders and notices to ensure that all relevant operations were covered. Unlike some other animal products industries, dairy processing can involve a multiple number of separate processing operations. If no other amendment were made to the Animal Products Act, primary processing would occur for dairy at the milking shed/farm dairy. All other processors of dairy material would be secondary processors. Secondary processors are not required to operate under a risk management programme unless they are included in an inclusion order or require an official assurance for export. If it were decided that secondary processors of dairy material were required to operate under a risk management programme, the type of processing involved would need to be identified in inclusion orders. It would be difficult to clearly define where one processing operation stops and another starts (ie, to define who needs to operate under a risk management programme and who does not). With the development of new technologies and processing techniques, it would also be very difficult to keep the inclusion orders up to date.

#### *Statement of public policy objective*

There are 2 overarching and related public policy objectives for the Animal Products (Dairy Products and Other Matters) Bill:

- the management of risks to human and animal health from the consumption and use of dairy products; and
- the facilitation of entry of dairy products to overseas markets by providing the controls and mechanisms needed for market access and the giving of official assurances.

#### *Statement of feasible options*

Five possible options were initially considered to regulate the dairy industry. These were—

- removal of all regulation and alternatives to regulation:
- status quo, that is, retain the Dairy Industry Act with no amendment:
- amendment to the Dairy Industry Act:
- new Dairy Industry Act embodying risk based management principles:
- use of the Animal Products Act.

The 5 options were tested against criteria to assist in determining whether the public policy objective would be met. Submissions received in a 1999 consultation round were also considered. The criteria applied were: public health, environmental impact, social/cultural impact (consumers), economic impact, and compliance, administrative, and legal costs.

Removing all dairy product safety regulation would not meet the public policy objectives. Government has a responsibility to ensure health and safety outcomes and provide official assurances when required by overseas markets, therefore a non-regulatory solution is not feasible. Remaining with the status quo would also not provide a suitable outcome in the medium term and would not address the problems identified. The public policy objectives cannot be adequately achieved through making amendments to the Dairy Industry Act, as it would be very difficult to accommodate such substantial change within the existing legislative framework.

Therefore officials decided that a new legislative framework is required to regulate the safety and trade of dairy products into the future and such a framework needs to provide for—

- a risk-based management approach to product safety, product labelling, and wholesomeness outcomes:
- sufficient flexibility to allow development and application of a risk-based management approach at the levels of individual businesses and operations, or to a class or group of products or operations, or to the sector as a whole:
- market access based on the provision of official assurances:
- industry developed risk-based management programmes:
- the setting of clear roles and responsibilities, including those of industry and third parties, and criteria for when Government may intervene:

- the resourcing of Government activities in accordance with cost recovery principles, taking into account government-wide developments in this area:
- the making of regulations, specifications, and notices, including those related to market access.

Two options that could deliver the public policy objectives and achieve the legislative framework were identified. They were—

- develop a new Dairy Products Act; or
- incorporate dairy products into the Animal Products Act.

The benefits for both industry and Government of either option are—

- an internationally recognised and accepted hazard management system would be provided:
- legislative provision would be made for contestability of verification services and testing services:
- the requirements of overseas markets and technological advances would be accommodated:
- there would be increased consistency across food regulation (as more of New Zealand's food legislation would be risk-based):
- the roles of Government, industry, and third parties would be clear on the face of the legislation:
- performance-based assessment would be provided for:
- there would be clear separation of New Zealand domestic food safety requirements and international trade/market access requirements.

The costs of either option would be—

- costs to Government in terms of developing, drafting, and implementing new legislation and any necessary regulations and specifications:
- some costs may be incurred by industry in accommodating the new requirements, although these are expected to be minor as the industry is currently operating under product safety programmes (which incorporate many risk-based management principles):

- a broadening of product safety programmes may be required to cover all issues related to “fitness for purpose” and not just food safety and truth in labelling. The dairy industry may see this as imposing additional costs on them but it is a necessary application of risk-based management and would be required under either legislative option.

After it was agreed that dairy product safety would be incorporated into the Animal Products Act, 2 feasible options of how this could be achieved were identified. They were—

- option 1: remove exclusion clause and use existing framework and mechanisms:
- option 2: remove exclusion clause and add terms to cover dairy processing.

Both options would allow dairy product safety and trade to be regulated by the Animal Products Act. Option 1, however, would be very complex to implement and would require a number of notices and orders. Option 2 is more straightforward in that it includes all dairy processors from the milking shed/farm dairy until the dairy product is exported or sent to retail. Option 2 is therefore the preferred option.

### *Statement of the net benefit*

It is proposed that dairy product safety and trade be regulated by the Animal Products Act.

The additional benefits of incorporation of dairy products into the Animal Products Act rather than the development of a new Dairy Products Act are—

- the new legislative environment for dairy products could be achieved before a new Dairy Products Act could be developed:
- the Government’s policy of developing generic legislation rather than industry specific legislation would be supported:
- there would be a smaller cost to Government as the risk-based management framework and content of the legislative requirements are already in place and can readily accommodate dairy products (the potential future integration of dairy produce was considered throughout the conceptual development and drafting work for the Animal Products Act):

- the potential for the policy principles applying to the regulation of dairy and other animal products to diverge is reduced by amending the existing legislation:
- future changes to food legislation would need to be made to only 2 principal Acts (Food Act 1981 and Animal Products Act), limiting future administrative costs to Government.

The option of a new Dairy Products Act would carry greater one-off costs to the Government in terms of development, drafting, and implementation than amending the Animal Products Act. A new Dairy Products Act would also mean that the Government would have to make future food safety legislation changes to 3 principal Acts (Food, Animal Products, and Dairy Industry) rather than 2, an ongoing cost to Government.

As noted above, 2 options were identified that would allow dairy product safety and trade to be regulated by the Animal Products Act. In comparison to option 1 (remove exclusion clause and use existing framework and mechanisms), option 2 (remove exclusion clause and add terms to cover dairy processing) has the following advantages:

- resembles the current risk-based management requirements under the Dairy Industry Act, which is to be repealed. All persons processing “dairy produce” under the Dairy Industry Act will be dairy processors under the Animal Products Act:
- requiring all dairy processors from milking to the point of retail sale or export of dairy product to have a risk management programme unless they are exempt or excluded from parts or all of the Animal Products Act is more straightforward and practical than option 1. Option 1 would require a jigsaw of orders and notices to ensure that all relevant operations were covered:
- specifically recognises and highlights the dairy industry thereby giving the industry the recognition on the face of the Act sought by its representatives.

The costs of option 2 are as follows:

- currently, product safety programmes also cover on-farm risks, such as those concerning animal health. This situation could be maintained by requiring all dairy farm producers to have a risk management programme.

The costs identified above for option 2 would also be a feature of option 1.

### *Business compliance cost statement*

#### **Sources of compliance costs**

The source of the majority of compliance costs will be derived from the subordinate legislation made under the Act (for example, regulations and specifications).

#### **Parties likely to be affected**

The parties affected by the proposal will be those involved in the production, manufacturing, transporting, storing, and exporting of dairy material and products.

#### **Estimated compliance costs of this proposal**

The majority of compliance costs will be derived from the subordinate legislation made under the Act (for example, the regulations and specifications). These costs will be examined as the detail of proposals for subordinate legislation is developed. Compliance costs will be outlined in a regulatory impact statement and business compliance cost statement when policy approval is requested for subordinate legislation. For the majority of the industry the technical requirements will remain the same, and this will mean very little change in costs.

#### **Longer-term implications of the compliance costs**

The longer-term compliance costs are dependent on the subordinate legislation and cannot be estimated at this time.

#### **Level of confidence of compliance cost estimates**

Refer to the statement made under “estimated compliance costs of the proposal”.

#### **Key compliance cost issues identified in consultation**

Industry said that it wanted to be consulted on compliance cost issues when the subordinate legislation (standards and specifications) were being developed.

### **Overlapping compliance requirements**

There are no overlapping compliance requirements.

### **Steps taken to minimise compliance costs**

The proposal maintains the status quo for the industry—

- existing product safety programmes will be deemed risk management programmes:
- existing standards under the Dairy Industry Act will be regulations, specifications, models, or guidance material under the Animal Products Act where possible.

### ***Consultation***

In developing this proposal, MAF officials produced a discussion paper, *Review of Food Safety and Standards in the Dairy Industry*. The discussion paper was publicly released in July 1999 and was distributed to a wide range of stakeholders, including dairy producers, exporters, manufacturers, farming groups, consumer groups, Maori, and Government departments. Eight weeks were allowed for consultation, and 6 submissions were received. All were in favour of a risk-based management approach to the regulation of the dairy product safety and for consistency across food regulation in New Zealand.

A further discussion paper, *Options for Legislative Reform of Food Safety in the Dairy Industry*, was provided initially to the Dairy Product Safety Advisory Council (DPSAC), in December 2000. DPSAC is an advisory committee set up by MAF (now New Zealand Food Safety Authority). Members are drawn from across the dairy sector, plus a representative from the Consumers' Institute, and observers from the Ministry of Health and Food Standards Australia New Zealand. The discussion paper was distributed to a large number of parties in February 2001. Consultation meetings were held during March 2001. Six submissions were received in support of the option to regulate dairy under the Animal Products Act, while one did not foresee any problems with either option. Industry has indicated that making dairy specific regulations and specifications under the Animal Products Act has allayed many of their initial concerns about this option because it would keep a degree of autonomy for the dairy industry in the legislative framework. Industry representatives also conveyed their willingness to

work with MAF officials in identifying solutions to ensure an amended Animal Products Act is an appropriate mechanism for regulating dairy products and will meet the Government's objectives.

After it was agreed that the safety of dairy products would be regulated by the Animal Products Act, officials consulted with dairy industry representatives, through a dairy reference group established for this purpose. The group was generally supportive of this proposal.

The following departments and agencies were consulted in the development of this proposal: the Treasury, Business Compliance Costs Unit of the Ministry of Economic Development, the Ministries of Justice, Health, and Foreign Affairs and Trade, and Te Puni Kōkiri.

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*Hon Annette King*

# **Animal Products (Dairy Products and Other Matters) Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

<b>1</b>	<b>Title</b> This Act is the Animal Products (Dairy Products and Other Matters) Act <b>2004</b> .	
<b>2</b>	<b>Commencement</b>	
(1)	This Act comes into force on <b>1 July 2004</b> , except for <b>section 32(1)(e)</b> .	5
(2)	<b>Section 32(1)(e)</b> comes into force on <b>1 July 2005</b> .	
<b>Part 1</b>		
<b>Amendments to Animal Products Act 1999</b>		
<b>3</b>	<b>Animal Products Act 1999 called principal Act</b> In this <b>Part</b> , the Animal Products Act 1999 is called “the principal Act”.	10
<b>4</b>	<b>Title amended</b> The Title of the principal Act is amended by inserting, after the words “ <b>Meat Act 1981</b> ”, the words “ <b>and the Dairy Industry Act 1952</b> ”.	15
<b>5</b>	<b>Interpretation</b>	
(1)	Section 4(1) of the principal Act is amended by repealing the definitions of <b>accredited person</b> and <b>accredited risk management programme verifier</b> , and substituting the following definitions:	20

“**accredited person** has the same meaning as **recognised person**

“**accredited risk management programme verifier** has the same meaning as **recognised risk management programme verifier**”.

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- (2) Section 4(1) of the principal Act is amended by inserting, after the definition of **contaminant**, the following definitions:

“**dairy material**—

“(a) means animal material that is—

“(i) milk extracted from a milking animal; and

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“(ii) any material derived or processed from milk extracted from a milking animal, up until delivery of the material at the place of sale for consumption or for end use for purposes other than consumption, or its export; and

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“(b) includes dairy product that, having been purchased or imported, is further processed

“**dairy processing** means all processing activities in relation to dairy material; and includes—

“(a) the extraction of milk from milking animals for the purposes of export or sale:

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“(b) transport of dairy material from a farm dairy to a place where processing or manufacturing involving the dairy material occurs:

“(c) processing of dairy material, including heat treatment, cooling, separation, concentration, filtering, blending, and extraction of milk components:

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“(d) the addition of other material (including food, ingredients, additives, or processing aids as defined in the Food Standards Code) or other dairy material to dairy material:

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“(e) the manufacture of products, including milk, butter, cream, milk-fat products, cheese, processed cheese, whey cheese, dried milks, milk-based infant formula, evaporated milks, condensed milks, whey, whey powder, whey products, casein, milk protein products, ice-cream, low dairy fat ice-cream-like products, yoghurt, other fermented milks, dairy desserts, lactose, and colostrum products:

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“(f) the packaging of dairy material:

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- “(g) the storage, transportation, and handling of dairy material prior to—
- “(i) delivery of the material at the place of sale for consumption or for end use for purposes other than consumption; or 5
- “(ii) its export:
- “(h) further processing of dairy material that was previously dairy product with or without the addition of other material (including food, ingredients, additives, or processing aids as defined in the Food Standards Code), including reprocessing, repacking, reconstitution with water, and recombination of dairy products with or without water to make any dairy products 10
- “**dairy processor** means a person who, for reward (otherwise than as an employee) or for purposes of trade, carries out dairy processing; and— 15
- “(a) includes—
- “(i) a farm dairy operator:
- “(ii) a transporter of dairy material from a farm dairy to a place of processing or manufacture: 20
- “(iii) a transporter of dairy material from one place of processing or manufacture to another:
- “(iv) the operator of any premises where dairy material is processed or manufactured or stored:
- “(v) a transporter of dairy material to the place of export or sale for consumption or end use for purposes other than consumption: 25
- “(b) does not include persons (such as airline or shipping staff, stevedores, retailers, or wholesalers) handling the relevant product at the port of export or at the place of sale for consumption or use 30
- “**dairy product**—
- “(a) means animal product that, having originally been dairy material,—
- “(i) has been delivered to the place of sale for consumption, or for end use for purposes other than consumption; or 35
- “(ii) has left New Zealand’s territorial waters in the course of its export; and
- “(b) includes **dairy produce** within the meaning of the Dairy Industry Act 1952 (as in force before its repeal by 40

- section 75** of the Animal Products (Ancillary and Transitional Provisions) Act 1999”.
- (3) Section 4(1) of the principal Act is amended by inserting, after the definition of **exporter**, the following definitions:
- “**farm dairy** means a place where milking animals are milked on a permanent or temporary basis; and 5
- “(a) subject to **paragraph (b)**, includes—
- “(i) any stockyard, milking yard, feedyard, silo pad, or other construction associated with or involved in the activity of extracting milk from milking animals; and 10
- “(ii) any place where milk from the milking animals is first collected, filtered, deposited, cooled, stored, or treated for transport or for further processing; but 15
- “(b) does not include any place where any further processing takes place, or transport to that place
- “**farm dairy operator** means the person in charge of operations at a farm dairy, including the extraction of milk from milking animals”. 20
- (4) Section 4(1) of the principal Act is amended by inserting, after the definition of **food safety programme**, the following definition:
- “**Food Standards Code** means the code incorporated into New Zealand law by the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002 and issued by the Minister under section 11C of the Food Act 1981”. 25
- (5) Section 4(1) of the principal Act is amended by inserting, after the definition of **marae**, the following definition: 30
- “**milk** means the mammary secretion of milking animals”.
- (6) Section 4(1) of the principal Act is amended by inserting in the definition of **primary processor** after paragraph (c), the following paragraph: 35
- “(ca) is a dairy processor; or”.
- (7) Section 4(1) of the principal Act is amended by inserting, after the definition of **recognised agency**, the following definitions:

- “**recognised person**, in relation to any verification or other specialised function or activity, means a person recognised or accredited under section 103 to perform that function or activity
- “**recognised risk management programme verifier** means a person currently recognised or accredited under section 103 as a risk management programme verifier”.
- (8) The provisions of the principal Act specified in **Schedule 1** are consequentially amended in the manner indicated in that schedule.
- 6 New section 6 substituted**  
The principal Act is amended by repealing section 6, and substituting the following section:
- “**6 References to this Act include references to Animal Products (Ancillary and Transitional Provisions) Act 1999, etc**  
Except where the context otherwise requires,—
- “(a) references to **this Act** include references to the Animal Products (Ancillary and Transitional Provisions) Act 1999, and to regulations or specifications or other requirements made or imposed under either Act:
- “(b) references in other Acts to this Act also include references to the Animal Products (Ancillary and Transitional Provisions) Act 1999 and to regulations or specifications or other requirements made or imposed under that Act or this Act.”
- 7 Products and material excluded from ambit of Act**  
Section 8(1)(b) and (2) of the principal Act are repealed.
- 8 Who must have a risk management programme?**
- (1) Section 13(1) of the principal Act is amended by inserting, after the words “under a registered risk management programme”, the words “, whether as the registered holder of the programme or as a business to which the programme applies under section 17A,”.
- (2) Section 13(3) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) the processing of dairy material or product that is not intended for human or animal consumption (subject to any order under section 15):”.

- 9 Certain persons may be required to have risk management programme by Order in Council** 5  
Section 15(1) of the principal Act is amended—
- (a) by inserting, after the words “primary producer,”, the words “dairy processor,”:
  - (b) by inserting, after the expression “(b), (c),”, the expression “(e),”. 10
- 10 Multi-business risk management programmes**
- (1) Section 17A(2) of the principal Act is amended by adding the expression “; and” to paragraph (c), and adding the following paragraph:  
“(d) each person whose business or part-business is to be covered by the programme is aware of the implications for his or her business in the event of a suspension or deregistration of the programme, or of the person whose programme it is ceasing to operate for any other reason.” 15  
20
  - (2) Section 17A of the principal Act is amended by adding the following subsection:  
“(5) The Director-General may decline his or her approval under this section if not satisfied that the operator of another business to which it is proposed that the programme apply is a fit and proper person to operate an animal product business, taking into account whether the operator or any directors or managers of the business concerned have been convicted, whether in New Zealand or overseas, of any offence relating to fraud or dishonesty, or relating to management control or business activities in respect of businesses of a kind (whether in New Zealand or elsewhere) that are regulated under this Act.” 25  
30
- 11 Registration of risk management programme**
- (1) Section 22 of the principal Act is amended by inserting, after subsection (1), the following subsection: 35

- “(1A) Nothing in subsection (1) requires the Director-General to register a risk management programme that purports to apply to a business or part-business of a person other than the applicant if the Director-General has not approved the programme’s coverage of that business or part-business under section 17A.” 5
- (2) Section 22 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) The Director-General may, at any time during the 12-month period following the commencement of operations under a registered risk management programme, by written notice to the operator concerned, impose further conditions as if they were imposed on registration under subsection (2), or amend or revoke any conditions imposed under that subsection.” 10
- 12 Exporters of animal products for human or animal consumption, and certain other animal material and products, must be registered** 15
- Section 48(1)(b) of the principal Act is amended by omitting all the words occurring before subparagraph (i), and substituting the following words: 20
- “(b) the animal material or product or consignment or person concerned is exempted from the requirements of this section—”.
- 13 New section inserted**
- The principal Act is amended by inserting, after section 59A, the following section: 25
- “59B **Exemption from requirements of food standards**
- The Director-General may, by notice under section 167, where satisfied that it is appropriate to do so having regard to the requirements of the relevant overseas market,— 30
- “(a) exempt from the requirements of any food standards issued under Part IIA of the Food Act 1981 any 1 or more classes or descriptions of animal material or product, or dairy material or product, that is intended for export from New Zealand to any destination other than 35
- to Australia:
- “(b) exempt from the requirements of any such food standards that apply only in New Zealand any 1 or more

classes or descriptions of animal material or product, or dairy material or product, that is intended for export to Australia.”

- 14 Power to direct disposal, etc, of animal material or product in certain circumstances** 5  
Section 82(1) of the principal Act is amended by adding the expression “; or” to paragraph (d), and adding after that paragraph the following paragraph:  
“(e) suspends an operation subject to a regulated control scheme, or deregisters or accepts deregistration of an operator or operation that is subject to a regulated control scheme, as is provided for in the relevant regulations.” 10
- 15 Power to examine, etc** 15  
Section 88(1)(b)(i) of the principal Act is amended by inserting, after the words “copying them”, the words “, or require the person having control of the documents or other records to forward them or a copy of them to the officer by way of post, courier post, fax, or other means acceptable to the officer”. 20
- 16 Conditions of recognition or accreditation**  
Section 105(2) of the principal Act is amended by inserting, before the word “activities”, the word “verification”.
- 17 New section inserted** 25  
The principal Act is amended by inserting, after section 108, the following section:  
**“108A Suspension of recognition**  
“(1) The Director-General may at any time, by notice in writing to a recognised agency or recognised person, suspend the recognition for a period not exceeding 3 months if the Director-General has reasonable grounds to believe that the performance of the agency or person is unsatisfactory having regard to the requirements of the position. 30  
“(2) The Director-General may impose conditions or requirements that must be satisfied if the suspension is to be lifted. 35

- “(3) If the Director-General considers that conditions or requirements have not been satisfied within the suspension period, the Director-General may, by notice in writing, extend the suspension for a further period not exceeding 3 months.
- “(4) Where the Director-General suspends recognition under this section or extends a period of suspension, the notice of suspension or extension must specify—
- “(a) the reason for the suspension or extension:
  - “(b) the period of the suspension or extension:
  - “(c) the date and time the suspension or extension commences: 10
  - “(d) the functions and activities that the suspension or extension relates to:
  - “(e) any conditions or requirements to be met before or during the suspension. 15
- “(5) The Director-General must notify—
- “(a) the relevant recognised agency of any suspension of recognition of a person for whom the agency is responsible:
  - “(b) any relevant recognised person of the suspension of recognition of an agency with which the person is associated. 20
- “(6) The Director-General may notify any suspension under this section in the *Gazette*.
- “(7) A suspension under this section does not affect any other actions that the Director-General may take under this Act. 25
- “(8) The Director-General may direct the agency or person the subject of a suspension under this section to take appropriate action to remedy the deficiency or failure that gave rise to the suspension. 30
- “(9) If a person acting under the delegated authority of the Director-General suspends any recognition of a person or agency under this section, the person or agency concerned may seek a review of the decision under section 162.”
- 18 Evidence in proceedings 35**
- Section 140(1)(a) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:

“(iia) any matter was or was not recorded on the risk management programme register; or”.

- 19 Disclosure of information for purpose of ensuring product safety, etc** 5
- Section 161(5)(a) of the principal Act is amended—
- (a) by repealing subparagraph (ii):
- (b) by inserting, after subparagraph (iv), the following subparagraphs:
- “(iva) the Marine Farming Act 1971:
- “(ivb) the Testing Laboratory Registration Act 1972:” 10
- (c) by inserting, after subparagraph (viii), the following subparagraphs:
- “(viiiia) the Animal Identification Act 1993:
- “(viiiib) the Hazardous Substances and New Organisms Act 1996:” 15
- (d) by inserting, after subparagraph (xia), the following subparagraph:
- “(xib) the Dairy Industry Restructuring Act 2001:”.
- 20 Right of review of certain decisions made under delegated authority** 20
- Section 162(1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:
- “(d) a decision to suspend or withdraw recognition of a person or agency under **section 108A** or section 109:”.
- 21 Notices** 25
- Section 167(1) of the principal Act is amended by inserting, after paragraph (ja), the following paragraph:
- “(jb) notifying any exemption under **section 59B** from the requirements of any food standard:”.
- 22 Repeals, amendments, and transitional provisions appear in Animal Products (Ancillary and Transitional Provisions) Act 1999** 30
- (1) Section 169(1) of the principal Act is amended by adding the following paragraph:

- “(e) repeal of the Dairy Industry Act 1952 (with effect on the commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**), together with associated revocations, amendments, and savings and transitional provisions.” 5
- (2) Section 169(2) of the principal Act is amended by inserting, after the words “Apiaries Act 1969”, the words “and (with effect on the commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**) the Dairy Industry Act 1952”.

## Part 2 10

### Amendments to Animal Products (Ancillary and Transitional Provisions) Act 1999

- 23 Animal Products (Ancillary and Transitional Provisions) Act 1999 called principal Act** 15  
In this **Part**, the Animal Products (Ancillary and Transitional Provisions) Act 1999<sup>1</sup> is called “the principal Act”.  
<sup>1</sup> 1999 No 94
- 24 Title amended**  
The Title of the principal Act is amended by inserting, after paragraph (b), the following paragraph:  
“(ba) repeal the Dairy Industry Act 1952 on **1 July 2004**; and”. 20
- 25 Interpretation**
- (1) Section 4(1) of the principal Act is amended by repealing the definition of **existing business**, and substituting the following definition: 25
- “**existing business**, or **existing animal product business**,—
- “(a) means a business that was operating as an animal product business as at—
- “(i) the commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**, in the case of a business engaged in dairy processing (and to the extent only of that dairy processing): 30
- “(ii) the commencement of Part 2 of the Animal Products Act 1999, in any other case; but
- “(b) does not include any business or operation referred to in paragraphs (a) to (c) of the definition of **new business**.” 35

- (2) The definition of **new business** in section 4(1) of the principal Act is amended—
- (a) by inserting, after the words “Animal Products Act 1999” where they first occur, the words “(or the date of commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**, in the case of a business engaged in dairy processing, to the extent that it is engaged in dairy processing)”:
  - (b) by inserting in paragraph (c), after the words “Animal Products Act 1999”, the words “(or the date of commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**, in the case of a business engaged in dairy processing, to the extent that it is engaged in dairy processing)”.
- 26 Existing businesses to register risk management programme by relevant staggered transition date** 15
- (1) Section 9(1)(b) of the principal Act is amended by repealing subparagraph (iii), and substituting the following subparagraph:
- “(iii) all renderers (whether or not licensed under section 20(1)(b) of the Meat Act 1981); and”.
- (2) Section 9(1)(c) of the principal Act is amended by repealing subparagraph (iii), and substituting the following subparagraph:
- “(iii) all petfood processors (whether or not licensed under section 20(1)(b) of the Meat Act 1981); and”.
- 27 New businesses**
- Section 11 of the principal Act is amended by inserting, after the words “Animal Products Act 1999”, the words “(or the date of commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**, in the case of a business engaged in dairy processing)”.
- 28 Interpretation** 35
- Section 61(1) of the principal Act is amended by inserting in the definition of **analyst**, after the words “a person”, the words “recognised or”.

**29 New Part 6 inserted**

The principal Act is amended by inserting, after section 74, the following Part:

**“Part 6  
“Dairy products**

5

**“75 Repeal of Dairy Industry Act 1952**

The Dairy Industry Act 1952 is repealed.

**“76 Regulations revoked**

The following regulations are revoked:

“(a) the Dairy Industry Regulations 1990 (SR 1990/290): 10

“(b) the Dairy Industry (Fees) Regulations 2000 (SR 2000/89):

“(c) the Dairy Industry (Food Act 1981) Exemption Order 1996 (SR 1996/200):

“(d) the Dairy Industry (Exporter Registration) Regulations 2002 (SR 2002/121). 15

**“77 Regulations continued in force**

“(1) The following regulations continue in force as if they were a regulated control scheme made by regulations under the Animal Products Act 1999, and as amended in the manner set out in **Schedule 6**: 20

“(a) the Dairy Industry (IMA Certification) Regulations 2000 (SR 2000/116):

“(b) the Dairy Industry (National Residue Monitoring Programme) Regulations 2002 (SR 2002/139). 25

“(2) Any criteria set out in circulars promulgated under regulation 17 of the Dairy Industry (IMA Certification) Regulations 2000—

“(a) are deemed to be specifications set by the Director-General under section 45 of the Animal Products Act 1999; and 30

“(b) continue in force accordingly, and may be amended or revoked by the Director-General by notice under section 167 of that Act.

- “78 **Product safety programmes deemed to be risk management programmes**
- “(1) All product safety programmes that, immediately before the commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**, were approved by the Director-General under the Dairy Industry Regulations 1990 are deemed to be risk management programmes, on the same terms of approval, registered under Part 2 of the Animal Products Act 1999. 5
- “(2) The operator of any such programme must, by **1 January 2005**, notify the Director-General of the particulars specified in section 19 of the Animal Products Act 1999 in relation to risk management programmes, and the Director-General must record those particulars on the register of risk management programmes. 10
- “(3) Where a completed application for approval of a product safety programme under the Dairy Industry Regulations 1990 has been lodged with the Director-General before the commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**,— 15
- “(a) the Director-General must process that application as if the Dairy Industry Regulations 1990 were still in force; and 20
- “(b) if the product safety programme is approved by the Director-General, it is, on approval, deemed to be a risk management programme registered under Part 2 of the Animal Products Act 1999; but 25
- “(c) nothing in this section requires the Director-General to approve the product safety programme if the application was not properly submitted in accordance with the Dairy Industry Regulations 1990, or the programme is seriously deficient. 30
- “(4) If an application for approval of a product safety programme to which **subsection (3)** applies, is seriously deficient, or any delay in the programme’s registration is primarily attributable to any act or omission of the person submitting it,— 35
- “(a) the Director-General may treat it as an application for registration of a risk management programme under section 20 of the Animal Products Act 1999; and
- “(b) the provisions of Part 2 of that Act apply accordingly.

- “(5) Any conditions or directions or instructions imposed or given under the Dairy Industry Act 1952 in relation to registered premises or to a product safety programme or its operator continue to apply as if imposed or given in relation to the premises or the programme or its operator under the Animal Products Act 1999. 5
- “79 **Transition period for dairy businesses without product safety programmes**
- “(1) Nothing in the Animal Products Act 1999 requires a person or business to operate under a registered risk management programme (or, if appropriate, a food safety programme under the Food Act regime) at any time before **1 July 2005** in respect of dairy processing operations of a kind that, immediately before the **commencement** of the **Animal Products (Dairy Products and Other Matters) Act 2004**, they carried out otherwise than under a product safety programme approved by the Director-General under the Dairy Industry Regulations 1990 (in this section called the **relevant operations**). 10 15
- “(2) In the case of relevant operations carried out on premises registered under the Dairy Industry Regulations 1990, the person or business concerned must, until the close of **30 June 2005** (or until any earlier date on which a risk management programme is registered or a food safety programme is approved in respect of those operations), comply with the requirements of— 20 25
- “(a) the Dairy Industry Act 1952 as if it had not been repealed by **section 75** , and as if—
- “(i) the definition of **inspector** in section 2 of the Dairy Industry Act 1952 included a reference to animal product officers; and 30
- “(ii) sections 26, 26A, and 27 of that Act were repealed; and
- “(b) the following regulations, as if they had not been revoked by **section 76**:
- “(i) regulations 2, 3, 13, 20 to 24, 35, 38 to 41, 46 to 48, 51 to 58, 60, and 61 of the Dairy Industry Regulations 1990; and 35
- “(ii) the Dairy Industry (Fees) Regulations 2000; and
- “(c) the Dairy Industry (National Residues Monitoring Programme) Regulations 2002. 40

- “(3) In the case of relevant operations that were not carried out on premises registered under the Dairy Industry Regulations 1990, and that produce product for the domestic market only (or the domestic market and Australia only), the person or business concerned must comply with the requirements of the Food Hygiene Regulations 1974 (as in force before their amendment by **section 32** of the **Animal Products (Dairy Products and Other Matters) Act 2004**) until the earlier of—
- “(a) the date a risk management programme is registered or a food safety programme is approved in respect of those operations; and
  - “(b) **30 June 2005**.
- “(4) To avoid doubt,—
- “(a) all dairy material or dairy product exported to a destination other than Australia must be processed under—
    - “(i) a risk management programme registered under the Animal Products Act 1999, or a product safety programme approved under the Dairy Industry Regulations 1990 (or both); or
    - “(ii) an exemption under section 9 of the Animal Products Act 1999;
  - “(b) dairy material or dairy product exported to Australia must be processed under such a risk management programme or product safety programme only if there are Australian market access requirements that are in excess of those applicable to the relevant material or product for the New Zealand domestic market.
- “(5) Without limiting the generality of **section 84** of this Act, regulations made under section 166 of the Animal Products Act 1999 may provide that, during the transition period provided for in this section, specified provisions of the Dairy Industry Act 1952 and the Dairy Industry Regulations 1990—
- “(a) are not to apply, in all or in any specified cases; or
  - “(b) are to apply subject to the modifications specified in the regulations.
- “80 **Application for registration should be made at least 3 months before 1 July 2005**
- “(1) Where a person or business to which **section 79** applies has applied for registration of a risk management programme at least 3 months before **1 July 2005**, the Director-General must

- take all reasonable steps to ensure that registration of the programme can occur before that date, provided the programme was properly submitted in a reasonable form.
- “(2) Nothing in **subsection (1)** requires the Director-General to register a risk management programme before **1 July 2005** in any case where— 5
- “(a) the risk management programme was not properly submitted in accordance with sections 17 to 20 of the Animal Products Act 1999, or is seriously deficient; or
- “(b) any delay in registration of the programme is primarily attributable to any act or omission of the person submitting the programme for registration. 10
- “81 **Existing exporters**  
All persons who, immediately before the commencement of the **Animal Products (Dairy Products and Other Matters) Act 2004**, were registered as exporters under the Dairy Industry (Exporter Registration) Regulations 2002 are deemed from the commencement of that Act (unless deregistered) to be registered as exporters under section 55 of the Animal Products Act 1999. 15 20
- “82 **Transition period for producers of animal feeds from dairy material**
- “(1) Nothing in the Animal Products Act 1999 requires any business that produces animal feeds for sale or export from dairy material to carry out its animal feed operations under a registered risk management programme at any time before **1 July 2005**, except as provided in **subsection (2)**. 25
- “(2) If the export of any animal feed from dairy material requires an official assurance, however, the official assurance may be given only if the relevant operations were carried out under a registered risk management programme. 30
- “83 **Equivalence of material and product produced under previous dairy regime**  
For the purposes of the Animal Products Act 1999 and this Act, any dairy material or product produced under and in compliance with the legislation referred to in **sections 75 to 77**, or under and in compliance with **this Part** of this Act, is to be 35

treated as equivalent to animal product, at the comparable stage of processing, produced under and in compliance with Parts 2 to 4 of the Animal Products Act 1999.

- “84 **Regulations**  
Without limiting the generality of section 166 of the Animal Products Act 1999, regulations under that section may prescribe transitional and savings provisions relating to the coming into force of the **Animal Products (Dairy Products and Other Matters) Act 2004** and to transitional matters during the period ending with **30 June 2005**.” 5 10
- 30 New Schedule 6 added**  
The principal Act is amended by adding the **Schedule 6** set out in **Schedule 2** of this Act.
- 31 Food Act 1981 amended**
- (1) Section 8AA(1) of the Food Act 1981 is amended by inserting, after paragraph (b), the following paragraph: 15  
“(ba) dairy processors (as defined in section 4(1) of the Animal Products Act 1999):”.
- (2) Section 11A(1) of the Food Act 1981 is amended by omitting the expression “subsection (2)”, and substituting the expression “**subsections (2) and (3)**”. 20
- (3) Section 11A of the Food Act 1981 is amended by repealing subsection (3), and substituting the following subsections:
- “(3) A milk producer may sell raw milk to a dairy processor (as defined in section 4(1) of the Animal Products Act 1999) who— 25  
“(a) purchases the milk for processing for sale or export; and  
“(b) is a person who—  
“(i) carries out the processing under a risk management programme registered (or deemed to be registered) under the Animal Products Act 1999 or under a food safety programme (as defined in section 4(1) of that Act); or 30  
“(ii) carries out processing of a kind that is exempt under section 9 of that Act from the requirement for a risk management programme; or 35

“(iii) is a person or business who, by **section 79** of the Animal Products (Ancillary and Transitional Provisions) Act 1999, is at the time of the sale excused from the requirement to operate under a registered risk management programme or a food safety programme. 5

“(4) This section is subject to section 9.”

### **32 Order and regulations amended**

- (1) The following order and regulations are amended in the manner indicated in **Schedule 3**: 10
- (a) the Animal Products (Ancillary and Transitional Provisions) Regulations 2000 (SR 2000/208):
  - (b) the Animal Products (Exemptions and Inclusions) Order 2000:
  - (c) the Animal Products (Fees, Charges, and Levies) Regulations 2002 (SR 2002/138): 15
  - (d) the Animal Products Regulations 2000 (SR 2000/207):
  - (e) the Food Hygiene Regulations 1974.
- (2) **Subsection (1)(e)** comes into force on **1 July 2005**.
-

s 5(8)

**Schedule 1**  
**Amendments to principal Act consequential on**  
**change of definitions**

<b>Section 4(1)</b>	
Omit from the definition of <b>verification</b> the word “accredited” and substitute the word “recognised”.	5
<b>Section 16(1)(e)</b>	
Omit the word “accredited” and substitute the word “recognised”.	
<b>Section 17(4)</b>	
Omit the word “accredited” and substitute the word “recognised risk management programme”.	10
<b>Cross heading preceding section 35</b>	
Omit this heading and substitute the heading <i>“Recognised agencies and risk management programme verifiers”.</i>	15
<b>Section 35</b>	
Omit from the section heading the word “ <b>accredit</b> ”.	
Omit from paragraph (b) the word “Accredit” and substitute the word “recognise”.	
<b>Section 81(1)</b>	20
Omit the word “accredited” and substitute the word “recognised”.	
<b>Section 87(1)</b>	
Omit from paragraphs (e) and (f) the word “accredited” and substitute in each case the word “recognised”.	
<b>Section 98</b>	25
Omit the word “accredited” at both places where it occurs and substitute the word “recognised”.	
<b>Part 8 heading</b>	
Omit the word “ <b>accredited</b> ”.	
<b>Section 99</b>	30
Omit from subsection (1)(a) the word “accredited” and substitute the word “recognised”.	
Omit from subsection (1)(b) the word “Accredit” and substitute the word “recognise”.	
Omit from subsection (2) the word “accredited” and substitute the word “recognised”.	35

**Section 101**

Omit from the section heading the word “**accredit**” and substitute the word “**recognise**”.

Omit from subsection (1) the words “accredit that person” and substitute the word “recognise that person as suitable”. 5

Omit from subsection (2) the word “accreditation” and substitute the word “recognition”.

Omit from subsections (2)(c) and (3) the word “accredited” and substitute the word “recognised”.

Omit from subsection (4) the word “accreditation” and substitute the word “recognition”. 10

**Section 102**

Omit from the section heading the words “**or accreditation**”.

Omit from subsection (1) the words “accreditation under”.

Omit from subsection (4) the words “accreditation of”. 15

**Section 103**

Omit from the section heading the words “**or accreditation**”.

Omit from subsection (1) the words “accreditation as”.

Omit from subsection (1) the words “or accreditation, as the case may require,”. 20

Omit from subsections (1)(c), (2)(twice), (3), (3)(a), and (3)(b)(iii) the words “or accreditation”.

**Section 104**

Omit from the section heading the words “**or accreditation**”.

Omit from subsection (1) the words “or accreditation”. 25

Omit from subsection (1)(a) the words “or accredit”.

Omit from subsections (1)(b), (2), and (3) the words “or accreditation”.

**Section 105**

Omit from the section heading the words “**or accreditation**”. 30

Omit from subsection (1) the words “or accreditation” at both places where it occurs.

Omit from subsection (2) the word “accredited” and substitute the word “recognised”.

Omit from subsections (3)(twice) and (4) the words “or accredited”. 35

Omit from subsection (5) the words “or accreditation” at both places where they occur.

Omit from subsection (5) the words “or accredited”.

**Section 106(a)**

Omit the word “accredited” and substitute the word “recognised”. 40

**Section 107**

Omit from the section heading the word “**accredited**” and substitute the word “**recognised**”.

Omit from the words preceding paragraph (a) the words “accredited, an accredited” and substitute the words “recognised, a recognised”. 5

Omit from paragraph (a) the words “an accredited” and substitute the words “a recognised”.

Omit from paragraph (c) the word “accreditation” and substitute the word “recognition”.

Omit from paragraph (e)(iii) the word “accredited” and substitute the word “recognised”. 10

Omit from paragraph (f) the words “an accredited” and substitute the words “a recognised”.

**Section 108**

Omit from the section heading the words “**and accreditation**”. 15

Omit from subsection (1) the word “accredited” and substitute the word “recognised”.

Omit from subsection (1)(twice) and subsection (2)(a) the words “or accreditation”.

Omit from subsection (2)(b) the words “or accredited”. 20

Omit from subsection (3) the words “or accreditation”.

**Section 109**

Omit from the section heading the words “**or accreditation**”.

Omit from subsection (1) the word “accredited” and substitute the word “recognised”. 25

Omit from subsections (1), (1)(a), (1)(b), (1)(c), (2), and (3)(at the 4 places it occurs) the words “or accreditation”.

Omit from subsection (3) the words “or accredited”.

Omit from subsection (4) the words “or accreditation”.

**Section 110**

Omit from the section heading the words “**or accreditation**”. 30

Omit from subsections (1) and (3) the word “accredited” and also the words “or accreditation”.

**Section 111**

Omit from the section heading the words “**or accreditation**”. 35

Omit the words “or accreditation” where they twice occur.

**Section 112**

Omit from the section heading the word “**accredited**”.

Omit from subsection (1) the words “recognised and person accredited” and substitute the words “and person recognised”. 40

**Section 112**—continued  
 Omit from subsection (2) the words “or accredited”.  
 Omit from subsection (3) the word “accredited” and also the words “or accreditation”.

**Section 127** 5  
 Omit from subsection (1)(f) the expression “, accredited,”.

**Section 133**  
 Omit from subsection (1)(a), subsection (1)(c), and subsection (2) the word “accredited” and in each case substitute the word “recognised”.

**Section 134** 10  
 Omit from subsection (1)(c) the words “an accredited” and substitute the words “a recognised”.  
 Omit from subsection (3)(a), (b), and (b)(iii) the word “accredited” and substitute the word “recognised”.

**Section 140** 15  
 Omit from subsection (1)(a)(i) and (c) and subsection (3) the words “an accredited” and substitute the words “a recognised”.

**Section 159** 20  
 Omit from subsection (1)(g) the word “Accredited” and substitute the word “recognised”.  
 Omit from subsection (2)(b) and (c) the word “accredited” and substitute the word “recognised”.

**Section 161** 25  
 Omit from subsection (5)(c) the word “accredited” and substitute the word “recognised”.

**Section 162**  
 Omit from subsection (1)(c) the words “accredit or”.  
 Omit from subsection (1)(d) the words “accreditation or”.

**Section 165A** 30  
 Omit from subsection (1)(a) the words “an accredited” and substitute the words “a recognised”.

**Section 166** 35  
 Omit from subsection (1)(e) the words “the accreditation of”.  
 Omit from subsection (1)(k) the word “accredited” and substitute the word “recognised”.

**Section 167(1)**  
 Omit from paragraph (m) the words “accreditation of”.

**Section 167(1)**—continued

Omit from paragraphs (p)(ii)(twice) and (q) the word “accredited” and substitute the word “recognised”.

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## Schedule 2

### New Schedule 6 added to principal Act

s 77

## Schedule 6

### Amendments to regulations continued in force

<b>Dairy Industry (IMA Certification) Regulations 2000</b> (SR 2000/116)	5
<b>New regulations 3 to 6</b>	
Omit regulations 3 to 6 and substitute the following regulations:	
<b>“3 Interpretation</b>	
In these regulations, unless the context otherwise requires,—	10
“ <b>Act</b> means the Animal Products Act 1999	
“ <b>approved method</b> means methods approved by the Director-General	
“ <b>approved quota compliance programme</b> means a quota compliance programme approved by the Director-General	15
“ <b>country-specific tariff quota</b> means the tariff quotas relating to the import of dairy product into the European Communities that specify New Zealand as the country of origin, namely,—	
“(a) the tariff quota for butter of New Zealand origin:	20
“(b) the tariff quota for cheddar cheese of New Zealand origin:	
“(c) the tariff quota for cheese for processing of New Zealand origin	
“ <b>Director-General</b> means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act	25
“ <b>equipment</b> includes all apparatus, containers, conveyances, machinery, piping, pumps, utensils, vehicles, and other things used in the transport, reception, testing, grading, manufacture, or storage of milk	30
“ <b>IMA certificate</b> means the certificate of official assurance in the form specified by the Director-General, having regard to tariff quota product requirements, that enables dairy product to be imported into the European Communities under a country-specific tariff quota	35

**Schedule 6**—continued

**New regulations 3 to 6**—continued

“**inspection** means any activity carried out for the purpose of ascertaining whether or not these regulations, or any approved quota compliance programme, are or is being, or can be, complied with

“**recognised laboratory** means a laboratory recognised under the Act 5

“**store** means premises used for storing tariff quota product

“**tariff quota product** means dairy product that is intended for import into the European Communities under a country-specific tariff quota 10

“**tariff quota product requirements** means the requirements established by the European Communities that must be met by a consignment of dairy product if it is to be imported into the European Communities under a country-specific tariff quota.

“4 **Application for IMA certificate** 15  
A person may apply in writing to the Director-General for an IMA certificate in accordance with section 63 of the Act.

“5 **Decision to issue IMA certificate**

“(1) The Director-General may issue an IMA certificate under section 61 of the Act if satisfied that— 20

“(a) the consignment of tariff quota product in respect of which the application is made would not cause New Zealand to exceed its country-specific tariff quota for the relevant period; and

“(b) the application is made by a person who is lawfully entitled to export tariff quota product; and 25

“(c) the consignment of tariff quota product in respect of which the application is made has been manufactured, stored, and tested in accordance with approved quota compliance programmes; and 30

“(d) the exporter making the application is operating in accordance with an approved quota compliance programme.

“(2) The Director-General must not issue an IMA certificate if the Director-General is aware of any information that suggests 35

**Schedule 6**—continued**New regulations 3 to 6**—continued

that the consignment does not meet the tariff quota product requirements.

**“6 IMA certificate may be withdrawn, reissued, cancelled, amended, or corrected**

The Director-General may withdraw, reissue, cancel, amend, or correct any IMA certificate as provided in section 64 of the Act.” 5

**Regulation 15**

Omit from the heading of regulation 15 the word “**inspectors**” and substitute the words “**animal product officers**”. 10

Omit subclauses (1) and (2) and substitute the following subclauses:

“(1) An occupier of a dairy factory, store, or recognised laboratory, and any holder of a risk management programme, must permit an animal product officer, or other person recognised by the Director-General, at all reasonable times to do all or any of the following for the purposes of these regulations: 15

“(a) to enter the dairy factory, store, recognised laboratory, or other premises and inspect any part of the premises, and any equipment, process, procedure, or dairy product on the premises: 20

“(b) to carry out any examination or test, or to require any demonstration of any processing, testing, or inspection procedure:

“(c) to peruse all charts and other records kept for the purposes of these regulations, and to make copies of any entries in the charts and records. 25

“(2) An exporter of tariff quota product must permit an animal product officer, or other person recognised by the Director-General, at all reasonable times to do all or any of the following for the purposes of these regulations: 30

“(a) to enter premises where the exporter—

“(i) stores the records that the exporter keeps for the purposes of these regulations; or

“(ii) carries out the processing of data relating to tariff quota product: 35

“(b) to peruse and audit—

**Schedule 6**—continued

**Regulation 15**—continued

- “(i) all records kept for the purposes of these regulations, and to make copies of any entries in the records; and
- “(ii) the systems and procedures for the processing of data relating to tariff quota product.” 5

**Regulation 17**

Revoke.

**Regulation 18**

Omit from the heading the word “**registered**” and substitute the word “**recognised**”. 10

Omit the word “registered” and substitute the word “recognised”.

**Regulation 20**

Revoke.

**Dairy Industry (National Residue Monitoring Programme)**

**Regulations 2002** (SR 2002/139) 15

**Regulations 3 to 10**

Revoke these regulations and substitute the following regulations:

“3 **Interpretation**

In these regulations, unless the context otherwise requires,—

“**Act** means the Animal Products Act 1999 20

“**chemical substance** includes an agricultural compound, a veterinary medicine, an environmental contaminant, an extraneous substance, a toxic substance, and the metabolites of those substances

“**Director-General** means the chief executive of the Department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act 25

“**farm dairy** has the same meaning as in the Act

“**operator** means—

“(a) for a dairy processor, including the operator of a farm dairy, every person who controls or manages the dairy processing; and 30

“(b) for a registered risk management programme, the person specified in the programme as the operator

“**programme** means the dairy residue monitoring programme referred to in regulation 5 35

**Schedule 6**—continued**Regulations 3 to 10**—continued

“**recognised laboratory** means a laboratory recognised under the Act

“**recognised person** means a person recognised by the Director-General under regulation 6

“**residue**— 5

“(a) means a chemical substance that remains in or on raw milk, dairy material, or dairy product and that—

“(i) is likely to be harmful to a human or an animal; or

“(ii) fails to comply with the New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standard and Food Standards Code applicable to New Zealand; or 10

“(iii) exceeds any maximum allowable level specified in standards or specifications made under the Act:

“(b) includes a contaminant that is of a chemical nature. 15

“4 **Purpose**

The purpose of these regulations is to enable it to be determined whether residues in dairy material or product are controlled effectively.

“5 **Programme established** 20

The dairy residue monitoring programme established and commenced on 1 July 2002 authorises recognised persons to sample and test dairy material or product from farm dairies and dairy factories (whether the dairy material or product is for domestic sale or export sale or for human or animal consumption). 25

“6 **Recognised persons**

The Director-General may recognise an agency or a person for the purpose of undertaking sampling, testing, or other activities under the programme if the Director-General is satisfied that the person or class of person has the necessary experience and skill. 30

**Schedule 6**—continued

**Regulations 3 to 10**—continued

- “7 **Testing only in recognised laboratories**  
All testing of dairy material or product under the programme must be carried out in a recognised laboratory.
- “8 **Results of tests**
- “(1) The Director-General must, within a reasonable time if practicable, advise a risk management programme operator (or the operator of a business to which **section 79(2)(a)** of the **Animal Products (Dairy Products and Other Matters) Act 2004** applies) of the results of tests under the programme of that operator’s dairy material or product. 5  
10
- “(2) The Director-General may release information on the programme, but must not identify an operator or farm dairy or dairy factory in doing so.
- “(3) The Director-General must keep information obtained through the programme confidential unless disclosure is required— 15
- “(a) under the Official Information Act 1982; or
- “(b) to enable a recognised agency or person to sample or test under the programme; or
- “(c) to enable a person to do whatever is necessary or desirable to respond to a finding that a residue in dairy material or product is unsafe or suspected to be so. 20
- “(4) A recognised agency, person, or laboratory that holds information about sampling or other activities under the programme must keep that information confidential unless the programme requires the agency, person, or laboratory to disclose the information. 25
- “9 **Director-General may conduct surveys**
- “(1) The Director-General may conduct or arrange a survey or do research, development, or investigatory work if the Director-General considers that is desirable or necessary to determine— 30
- “(a) whether or not, or how, to exercise a power or function contemplated by these regulations in relation to the programme; or 35

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**Schedule 6**—continued**Regulations 3 to 10**—continued

- “(b) how best to achieve the purpose of these regulations, including developing or testing legislative, administrative, technical, or other measures.
- “(2) The Director-General is authorised under subclause (1) to investigate or confirm the presence, absence, extent, or distribution of a residue in dairy material or product in New Zealand or the risk posed by that residue. 5
- “(3) The Director-General must do everything reasonably practicable to consult the persons likely to be substantially affected by a survey referred to in subclause (1). However, consultation is not required if the Director-General considers that an urgent survey is desirable in the public interest.” 10
-

**Schedule 3**  
**Orders and regulations amended**

s 32

**Animal Products (Ancillary and Transitional Provisions)  
Regulations 2000 (SR 2000/208)**

Insert after regulation 3 the following regulation: 5

**“3A Dairy material, products, and processors excluded**

Nothing in these regulations applies to any dairy material,  
dairy products, or dairy processors.”

**Animal Products (Exemptions and Inclusions) Order 2000  
(SR 2000/209)** 10

**Clause 3**

Insert in their appropriate alphabetical order the following  
definitions:

**“alcoholic beverage** means an alcoholic beverage that  
contains dairy product or alcohol derived from dairy material  
or product 15

**“formulated caffeinated beverage** means a non-alcoholic  
water-based flavoured beverage that contains caffeine and  
dairy material or product, and that may contain carbohydrates,  
amino acids, vitamins and other substances, including other 20  
foods, for the purpose of enhancing mental performance

**“ice cream** means a sweet frozen food, generally aerated,  
made from dairy material and other foods”.

**Clause 5**

Insert in clause 5(1), after the words “animal products”, the words 25  
“or the processing of dairy material, being products or material”.

Insert in clause 5(2)(a) and (b), after the words “processing of  
animal products”, the words “or the processing of dairy material”.

Insert in clause 5(2)(a), after the words “those animal products”, the  
words “or that dairy material”. 30

**Clause 6**

Insert in clause 6(1), after the words “animal products” the words  
“or the processing of dairy material, being products or material”.

Insert in clause 6(2)(a), (b), and (c), after the words “processing of  
an animal product”, the words “or processing of dairy material”. 35

Insert in clause 6(2)(c)(i), after the words “animal product”, the  
words “or dairy material”.

**Clause 7**

Insert in clause 7(1) and (2), after the words “animal products”, the words “or processing of dairy material, being products or material”.

**New clauses 7A and 7B**

Insert after clause 7 the following clauses: 5

**“7A Processing of certain dairy products consumed on premises**

Parts 2 to 4 of the Act do not apply to the processing of dairy products for human consumption if—

- “(a) the processing is carried out at the premises where all the resulting product is consumed; and 10
- “(b) no dairy product is exported from those premises; and
- “(c) the dairy product is sold only by way of retail sale.

**“7B Processing of certain dairy products that are food**

“(1) Parts 2 to 4 of the Act do not apply to the processing of the following dairy material or products (being material or products that consist of or contain dairy material or products): 15

- “(a) multi-ingredient foods and other prepared foods that, despite containing 1 or more ingredients that are dairy material or products, do not consist principally of dairy material or products (for example, biscuits, cakes, bread, soups, sauces, snack goods, pastries, confectionary, and also prepared meals that do not consist principally of dairy product): 20
- “(b) formulated caffeinated beverages and alcoholic beverages. 25

“(2) The exemption in this clause does not apply to the processing of icecream.”

**New clauses 8A and 8B**

Insert after clause 8 the following clauses: 30

**“8A Domestic dairy processors**

“(1) A risk management programme is not required for dairy processors who—

- “(a) are not farm dairy operators; and
- “(b) process dairy material for the domestic market or Australia only; and 35
- “(c) process the dairy material in accordance with a food safety programme approved under the Food Act 1981.

**New clauses 8A and 8B—continued**

“(2) The exemption under this clause does not obviate the need for a risk management programme if the processed product is intended to be exported other than to Australia (whether or not the export would require an official assurance).

**“8B Processing of dairy material for animal consumption 5**

“(1) A risk management programme is not required for the processing of dairy material for animal consumption if the processing occurs at a place or premises where no other operations requiring a risk management programme take place.

“(2) The exemption in this clause does not obviate the need for a risk management programme if the processed product is intended for export (whether or not the export would require an official assurance).” 10

**Clause 17**

Insert in clause 17(1), after paragraph (a), the following paragraph: 15

“(aa) formulated caffeinated beverages and alcoholic beverages:”.

**New clause 20A**

Insert after clause 20 the following clause:

**“20A Technical grade dairy product processed at same place as dairy product for human or animal consumption 20**

“(1) The processing of technical grade dairy product must be carried out under a risk management programme if—

“(a) that processing is carried out at the same place as the processing of dairy material for sale or export for human or animal consumption and that latter processing is required by or under the Act to be carried out in accordance with a risk management programme; or 25

“(b) the product is for export, and an official assurance is required by the authorities of the importing country. 30

“(2) In this clause, **technical grade dairy product** means dairy product for sale or export that is not intended for human or animal consumption.”

**Animal Products (Fees, Charges, and Levies) Regulations 2002 (SR 2002/138) 35**

Insert after regulation 2 the following regulation:

**Animal Products (Fees, Charges, and Levies) Regulations 2002  
(SR 2002/138)—continued****“2A Dairy processing excluded**

Nothing in these regulations applies to require the payment of any fee, charge, or levy by any dairy processor in respect of dairy processing operations or premises.”

5

**Animal Products Regulations 2000 (SR 2000/207)**

Insert after regulation 2 the following regulation:

**“2A Dairy material, product, and processing excluded**

Nothing in these regulations applies to any dairy material, dairy product, or dairy processor.”

10

**Food Hygiene Regulations 1974 (SR 1974/169)****Regulation 2(1)**

Insert after the definition of **food premises** the following definition:

“**frozen confection** means a frozen product prepared from sugars or honey and other foods, but does not include ice-cream”.

15

Omit the definition of **milk** and substitute the following definition:

“**milk** includes any liquid form of milk from a milking animal, but does not include—

“(a) sealed packages of ultra-heat-treated milk; or

“(b) milk sold in tins that are hermetically sealed”.

20

Omit from the definition of **readily perishable food** the words “perishable food that consists” and substitute the words “food for sale that consists”.

**Regulations 54 to 56**

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Revoke regulations 54, 55, and 56.

**Regulation 57**

Omit the words “pending sale” and substitute the words “pending retail sale”.

**Part XI heading**

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Omit the words “**ice-cream and**”.

**Regulation 58**

Omit from the heading the words “**ice-cream and**”.

Omit the words “ice-cream or” where it occurs before paragraph (a) and in paragraphs (a), (b), and (g).

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**Regulation 59**

Omit from the heading the words “**ice-cream or**”.

**Regulation 59**—continued

Omit the words “ice-cream or” where they occur before paragraph (a) and in paragraphs (a), (b), (c) (twice), and (d).